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Letter dated 18 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 10 April 2002 (S/2002/396).

The Counter-Terrorism Committee has received the attached supplementary report from Barbados, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 28 June 2002 from the Permanent Mission of Barbados to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of Barbados to the United Nations presents its compliments to the Chairman of the Counter-Terrorism Committee and with reference to the e-mail of 25 June 2002 of the Ministry of Foreign Affairs of Barbados has the honour to transmit the original documentation of the supplementary report of the Barbados Government, as well as texts of the relevant legislation, pursuant to paragraph 6 of Security Council resolution 1373 (2001).

Enclosure

Supplementary report of the Barbados Government pursuant to paragraph 6 of Security Council resolution 1373 (2001)

Introduction

1. On December 24, 2001, Barbados submitted a comprehensive report in response to the mandate contained in paragraph 6 of United Nations Security Council Resolution 1373 (2001). By letter of April 1, 2002 the Committee requested clarification and additional information on a number of issues contained in the report. This Supplementary Report represents the response of the Government of Barbados to the Committee and deals specifically with the queries presented, in the chronological order in which they were raised.

Paragraph 1. "***Decides* that all States shall:**

(a) **Prevent and suppress the financing of terrorism acts;"**

Question 1a) Please could Barbados outline in detail the provisions of the Bill that will specifically make terrorism and the financing of terrorism and all the ancillary acts offences. Please provide a progress report on the enactment of the Bill.

2. On May 28, and 29, 2002 the House of Assembly and the Senate respectively debated and unanimously adopted legislation in the form of the Anti-Terrorism Act, 2002. The Act, which entered into force on May 30, 2002, provides for the prevention and combating of acts of terrorism. Section 3 defines the acts which constitute the offence of terrorism, and Section 4 establishes the financing of terrorism as an offence. A copy of the Act is attached.

3. In adopting this legislation, Barbados has fulfilled the requirements of paragraph 2 (e) of UN Security Council Resolution 1373, that States ensure that terrorist acts are serious criminal offences in their jurisdiction and that the punishment of such acts duly reflects the seriousness of the acts.

4. Section 4 of the Act deals specifically with the financing of terrorism as an offence and incorporates the provisions of Article 2 of the UN Convention for the Suppression of the Financing of Terrorism (1999) and satisfies Barbados' obligations under paragraphs 1 and 2(e) of the U.N Security Council Resolution 1373. This Section criminalises the wilful collection of funds unlawfully and also the wilful provision of financial services where there is an intention that the funds or services are to be used to carry out acts that constitute the offence of terrorism. It stipulates that an offence under Section 4 (1) is committed whether or not the funds or financial services were actually used to carry out the offence. The ancillary acts related to the offences are covered in the Act in Sections 3(2) and 4(3), respectively.

Please clarify whether it is possible to identify the beneficial owners of the entities registered in Barbados and how Barbados prevents persons supporting terrorism registering entities in its territory.

5. Under the Laws of Barbados it is possible to identify the beneficial ownership of entities registered through Section 170 (2) of **The Companies Act CAP 308** (the text of which was provided with the previous Report), in which every company is required to prepare and maintain at its registered office a register of its shareholders, showing:-

i) the name and the latest known address of each person who is a shareholder;

ii) a statement of the shares held by each shareholder;

iii) the date on which each person was entered on the register as a shareholder and the date on which any person ceased to be a shareholder.

6. In addition, recent amendments to the Act now mandate: -

(a) every company having a share capital to file an Annual Return with the Registrar of Corporate Affairs and Intellectual Property. The Annual Return requires all companies having a share capital to submit to the Registrar the information set out at (i) to (iii) above. Furthermore, the Registrar has the power to strike off the Register any company that neglects or refuses to file an Annual Return. By virtue of Section 15 A (2) of the **Companies Act,** a Companies and their directors who fail to file an annual return are liable to an administrative penalty for every day that the return remains unfiled. A copy of this Amendment is attached.

(b) every company that transfers any of its shares subsequent to the filing of its last Annual Return to present that subsequent transfer to the Registrar of Corporate Affairs for adjudication.

7. In addition to the legislative requirements mentioned at paragraphs 5 and 6, administrative arrangements are in place at the office of Corporate Affairs and Intellectual Property to enable the Registrar, using authoritative sources, to cross-check all relevant lists of persons suspected of supporting or financing terrorism against the names of persons who are registered or endeavouring to register entities in Barbados.

"*Decides* that all states shall:

1(b) Criminalise the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or their territories with the intention that the funds should be used, or in the knowledge that they are to be used to carry out terrorist acts;"

Question 1(b) In view of the reply in paragraph 30 of the report which states that affairs of international banking customers are covered by confidentiality, how does the Central Bank of Barbados obtain information on depositors suspicious transactions?

8. In Barbados, the affairs of international banking customers are covered by confidentiality in relation to the banks' dealings with the Central Bank as the regulatory authority. However, confidentiality is not absolute where the state has concerns about suspicious banking activity.

9. In keeping with its role of safeguarding the safety and soundness of the financial system, the Central Bank carries out onsite inspections of financial institutions. During these inspections, the Bank assesses *inter alia* the procedures and controls that financial institutions have in place to combat money laundering. Specifically, the Central Bank verifies that each financial institution adopts adequate internal control procedures to facilitate the detection of suspicious or unusual activity.

10. If a financial institution detects suspicious activity, it is required by law to submit a report to the Anti-Money Laundering Authority for investigation by the Financial Intelligence Unit. The Money Laundering (Prevention and Control) (Amendment) Act 2001 (a copy of which has been previously submitted with the Barbados Report) gives extensive investigative powers to the Financial Intelligence Unit (FIU) which reports to the Attorney General.

11. The FIU has access to all the relevant financial agencies including the Land Tax Department, the Value Added Tax Office, the Department of Inland Revenue, the Customs and Excise Department and the Corporate Registry. Such access serves to enhance the investigative powers to develop financial transaction profiles of individuals or bodies operating in the country. This information is confidential and can only be used for the legitimate purpose authorised in the legislation.

Is there a proposal to amend the Common Law and/or the Criminal Procedure Act to incorporate the requirements of the International Convention for the Suppression of the Financing of Terrorism?

12. The Government of Barbados has implemented the provisions of the Convention through the enactment of the Anti-Terrorism Act 2002-6. No amendments to Common Law or the Criminal Procedure Act are necessary.

"*Decides* that all States shall:

1(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;"

Question 1(c) It appears that the requirement of this sub-paragraph cannot be fulfilled on account of constitutional restraint on freezing of assets and forfeitures. Please inform the CTC of the outcome of the study of the legal consultant on this matter.

13. The Report of the legal consultant assisted in clarifying the appropriate manner in which matters related to the freezing of assets and forfeitures could be conducted in accordance with the Constitution of Barbados. Based on the outcome of that study, the Anti-Terrorism Act provides for the freezing of funds through a judicial process rather than by way of Executive Order. It enables the Court on an application by the Director of Public Prosecutions to make an order to freeze, without delay, the funds and other financial assets or economic resources in possession or in the control of a person charged or about to be charged with a terrorist offence. The procedure with regard to the freezing and forfeiture of funds is outlined in Sections 8 and 9 of the Anti -Terrorism Act 2002.

14. In drafting this new Act, the Government has taken care to balance its obligations as a Member of the United Nations, which is cooperating fully in the international effort to combat terrorism, with its constitutional duty to show full respect for due process, natural justice and basic human rights. The legislation also takes care to protect the rights of innocent third parties so that they do not suffer losses from forfeiture or freezing of assets.

Does the law allow the freezing of funds, financial assets and or economic resources that are held by persons or entities in Barbados that support terrorism outside the territory of Barbados?

15. As indicated in paragraph 12, the Anti-Terrorism Act 2002 enables the Court, on application by the Director of Public Prosecutions, to make an order to freeze the funds in the possession or control of someone charged or about to be charged with a terrorist offence. Once a request has been made, it goes before a judge pursuant to Section 8(4). In this regard, a freezing order can then be made by the Court once it is established that a reciprocal arrangement exists between Barbados and the foreign state making the request.

Section 27 of the Mutual Assistance in Criminal Matters Act outlines the procedure for states seeking assistance in obtaining a restraining or freezing order.

"*Decide*s that all States shall:

> **1(d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly by such persons and of persons and entities acting on behalf of or at the direction of such persons;"**

Question 1(d) Are there legal provisions that govern the collection and use of funds by charitable institutions? Please outline them.

16. All charities, except those which are exempt, are required to be registered under the **Charities Act, CAP 243**, a copy of which is attached. In making the application for registration, the charity trustees are required to supply copies of the trusts and any other information which the Registrar may request for the purpose of the application.

17. The only Charities exempted from registration are those listed in the First Schedule of **CAP 243** as follows :-

(a) the Barbados Community College;

(b) the National Sports Council;,

(c) the National Assistance Board;

(d) the Queen Elizabeth Hospital Board;

(e) the Child Care Board;

(f) the Sanitation Service Authority

(g) schools administered under the **Education Act , CAP 41**;

(h) public and private hospitals; and

(i) churches within the meaning of that expression in Section 2 of the Anglican Church, Act Cap 375 and any church whose Superintendent or Minister receives any sum by way of grant in aid under the **Grant in Aid(Churches) Act, CAP 376;**

(j) any charity which is excepted by order made by the Attorney General;

(k) any charity whose endowment or income from property does not exceed $100 per annum.

The entities at (a)-(f) and most of those at (g) are governmental bodies.

18. The trustees of a charity are required to keep proper books of account with respect to the affairs of the charity. The trustees must also prepare consecutive statements of accounts consisting of an income and expenditure account relating to a period of not more than 15 months and these must be transmitted to the Registrar.

19. The Registrar is also empowered to order an investigation and audit of the accounts of a charity. This is done by a member of the Institution of Chartered Accountants of Barbados. In addition, by section 38 (1) of the Act the Attorney General may examine and inquire into any charity (including an exempt charity referred to in paragraph 16. This inquiry can be into the nature and objects, administration, management, the value, condition and application of the property or income belonging to the trusts-Section 38 of **CAP 243.**

20. The **Charities Act** was recently amended through the Second Schedule of the Anti-Terrorism Act, 2002, by the insertion of sub-section 38 (1A), to empower the Attorney General to order an examination and inquiry if any charity is suspected of having committed an offence under section 3 or 4 of the Anti-Terrorism Act.

21. The trustees of a registered charity are also required to inform the Registrar if there is any change in its trusts or in the particulars, including the names of the trusts.

Are natural or legal persons other than banks (e.g. attorneys, notaries and other intermediaries) required to report suspicious transactions to the public authorities, and if so, what penalties apply if such persons omit to report either wilfully or by negligence?

22. To the extent that an Attorney-at-Law performs specific financial services and maintains a client's account in relation to those services, he is required by law to report suspicious transactions, and can be convicted and fined if he fails to do so. The Money Laundering (Prevention and Control Act) focuses on broad generic classes of occupation rather than the character of persons extending the services, and in so focusing demands that any person involved in "money transmission services, investment services or any services of a financial nature' be aware of the provisions and obligations under that Act.

23. However, the Government of Barbados has also adopted administrative policies to sensitise all service providers to know their customers. Guidelines have been issued and other sensitisation exercises have been conducted so that persons are encouraged to report suspicious transactions as they are detected.

24. In Barbados, Notaries are not involved in services of a financial nature but are recognised specifically for the purpose of taking oaths.

"*Decides* also that all States shall:

2 (a) Refrain from providing any form of support, active or passive to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;"

Question 2(a) Does Barbados have in place or propose to introduce any measures to prevent illegal entry of weapons into is territory?

25. Under the laws of Barbados, citizens do not have the automatic right to bear arms and only licensed firearm holders are allowed to do so. The supply of weapons to citizens is controlled by the **Firearms Act 1998-32,** a copy of which was previously submitted with the Barbados Report. The policy related to the issue of firearm licences is stringent and has been further tightened.

26. Barbados does not manufacture, produce or distribute weapons, ammunition or military equipment, but remains very concerned over the increasing incidence of illegal export of illicit arms within the hemisphere. In particular, it notes with concern the correlation between the decommissioning of weapons in the context of hemispheric peace processes and the ready availability of a pool of weapons on the region's black market.

27. Barbados intends to strengthen its administrative procedures and security measures by installing electronic scanning equipment at ports of entry for all cargo coming into Barbados and by requiring all sea-going craft, including local fishing vessels to use designated customs controlled ports of entry when entering the country.

28. The human resource, administrative and equipment costs associated with the heightened surveillance required in the post-September 11th environment are extremely burdensome on a small developing state like Barbados, which has not previously needed to give priority to this aspect of security, and which continues to be concerned at the effect the diversion of budgetary resources in this regard will have on the country's economic and social development. There is an urgent need for financial and technical assistance for the provision of equipment and training to strengthen the country's capacity at surveillance, detection and interception of illicit arms. With the limited financial resources of a small economy, the cost of implementing such measures as related to monitoring terrorist activity has not been previously factored among economic priorities. In this regard, the Government of Barbados wishes to request financial assistance for the purposes of surveillance and interception of illicit arms.

"*Decides* also that all States shall:

2(b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;"

Question 2(b) This paragraph calls upon States to take necessary steps to provide early warning to other states to prevent the commission of terrorist acts. What steps have been taken by Barbados in this regard, apart from participation in the Regional Security System of which it is a member?

29. The Government of Barbados honours its Treaty and other obligations in respect of the maintenance of hemispheric and international security, and has given details of the mechanisms in place for the gathering and exchange of intelligence and information at paragraphs 58 to 65 of the previous report to the Security Council. The Barbados Government and its Security and Law Enforcement Agencies cooperate fully with like-minded

Governments in this regard. To provide further details on operational matters would compromise the effectiveness of the on-going efforts.

What provisions are in place under the Regional Security System to ensure the implementation of the requirements of this sub-paragraph?

30. The Regional Security System has widened its ability in gathering intelligence information with regard to counter-terrorist activities in the Eastern Caribbean region. In accordance with the RSS Treaty, a threat to any one RSS Member State is a threat to all and with this in mind, every effort is being made to ensure the effective exchange of information between Member States.

31. The activities of the RSS Maritime Operations Cell(MOC) have been upgraded to cover all aspects of intelligence gathering , not only in the area of combating the drugs threat, but with greater responsibility to collect data regarding possible terrorist activity in any of the Member States or indeed the region as a whole.

32. The RSS has formed close links with military Chiefs and Commissioners of Police in all Member States of the Eastern Caribbean.

***"Decides* also that all States shall:**

2 (d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;"

Question 2(d) What is the extent of the jurisdiction of the courts in Barbados over foreigners accused of terrorist acts who are found in the territory of Barbados?

33. An act to which the Committee's question under sub-paragraph 2(d) relates, may be an offence against Barbadian law, or it may be an offence against a foreign law.

34. If the act in question is an offence against a foreign law and it is a foreign State that wishes to prosecute the foreigner found in Barbados, Barbadian extradition law applies. The foreigner can be said to be subject to Barbadian jurisdiction in the limited sense that by virtue of Barbados' obligations under Barbadian extradition law, Barbados may be under a legal duty to hand him over to the foreign State for trial by that foreign State.

35. For the purposes of paragraph 34 above, Barbadian extradition law is contained in the **Extradition Act, CAP. 189**, a copy of which was submitted to the Committee with the Barbados Report on December 24, 2001.

36. If the act in question is an offence against Barbadian law, the foreigner found in Barbados is in principle subject to the jurisdiction of the Barbadian courts just as a citizen of Barbados would be. An exception to this is the case where the foreigner enjoys diplomatic privilege, in which case the **Diplomatic Immunities and Privileges Act CAP. 18** applies. A copy of that Act is attached.

37. It will be seen from Section 12 of the Anti-Terrorism Act 2002, that in accordance with the Barbados Government's understanding of its legislative capacity under international law, the jurisdiction of Barbadian courts under that Act may even extend in certain circumstances to foreigners accused of terrorist acts who may never have set foot in Barbados.

***"Calls* upon all states to:**

3(c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;"

Question 3(c) Please provide a list of the countries with which Barbados has concluded bilateral treaties.

38. Barbados became party to a number of bilateral treaties on independence in November 1966 by virtue of succession. The process of review of the treaties to decide upon their continued application to Barbados has not been completed, and those treaties which have continued in force for the United Kingdom are currently applicable to Barbados. Barbados has also signed an Extradition Treaty with the United States of America in 1996 and participates in the arrangements relating to the Rendition of Fugitive Offenders between countries of the Commonwealth. With respect to treaties related to mutual assistance, Barbados has concluded a mutual assistance treaty in relation to Drug Trafficking, with the United Kingdom in 1991. In 1996, Barbados and the United States of America concluded a Mutual Legal Assistance Treaty in Criminal Matters.

39. As indicated previously in paragraph 18 of the Report previously submitted to the UN Security Council, Barbados has concluded Double Taxation Agreements with Switzerland, the United Kingdom Canada, the United States of America, Finland, Norway, Sweden, China, Cuba, Venezuela and Malta, which all have adequate exchange of information provisions. In addition, Barbados also has a Tax Exchange of Information Agreement with the United States of America, which was signed in 1984.

***"Calls* upon all states to:**

3(d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

Question 3(d) Please indicate the intentions of Barbados regarding the signing and ratification of the UN Convention on the Physical Protection of Nuclear Material.

40. The Government of Barbados is committed to the ideal of global peace and security and freedom from fear of nuclear proliferation. It therefore treats with seriousness all issues related to the peaceful uses of nuclear materials. Barbados does not have the capacity to manufacture, or store nuclear materials, nor does Barbados have nuclear material in its possession for peaceful uses, apart from insignificant amounts associated with medical equipment which fall below the reporting threshold of the Safeguards Agreement of the Non Proliferation Treaty. In this context, accession to the UN Convention on the Physical Protection of Nuclear Material was not previously seen as a priority. However, given the current international security environment in the aftermath of the events of September 11, 2001, a review is being undertaken with the aim of accession to the Convention.

Please provide a progress report on the ratification of the remaining international conventions and protocols relating to terrorism that Barbados has not yet ratified.

41. The Cabinet has approved accession of the Government of Barbados to the following Conventions:

- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988);
- Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991)
- United Nations Convention for the Suppression of Terrorist Bombing (1997)

Formal steps for accession to these Conventions are being finalised and are expected to be completed shortly.

42. As indicated at paragraph 2, the Government of Barbados has enacted legislation to implement the UN International Convention for the Suppression of the Financing of Terrorism (1999) on May 30, 2002. Formal steps for ratification of that Convention will be completed shortly.

Please explain how the Barbados has implemented those conventions and protocols it has ratified and outline the relevant legislation that has been adopted.

43. The Government of Barbados is a state party to the listed United Nations Conventions, and has implemented legislation on the following, as outlined below:

(a) The Convention on Offences and Certain Acts Committed on Board Aircraft (1963). Ratified in 1972, this has been incorporated into the into the **Hijacking Act, CAP. 135 A**

(b) The Convention for the Suppression of Unlawful Seizure of Aircraft (1970) Ratified in 1973 and incorporated into the **Hijacking Act, CAP 135A.**

(c) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971). Barbados has incorporated this Convention into the **Civil Aviation (Montreal Convention) Act, CAP. 123A**

(d) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents (1973). This has been incorporated into the **Internationally Protected Persons Act, CAP 123A**

(e) The International Convention against the Taking of Hostages (1979). Barbados acceded in 1981.

(f) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988). Barbados acceded in 1994 and this has been incorporated into the **Shipping Act, CAP. 296.**

(g) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988). Barbados acceded in 1994.

Have the offences under the relevant international conventions and protocols been included as extraditable offences in bilateral treaties to which Barbados is party?

44. The purpose of this question is not understood. The response at paragraphs 49 to 58 however sets out in detail Barbados' position in relation to extradition generally.

***"Calls* upon all states to:**

3(f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts;"

Question 3(f) How does Barbados propose to meet the requirements of this sub-paragraph?

45. The number of persons seeking asylum or refugee status in Barbados over the years has been at the absolute minimum. Consequently there has been no pressing need to enact legislation, in addition to the current Immigration Act, aimed at regulating the activities of such persons.

46. As in the case of other persons seeking to take up residence in Barbados, detailed security checks are carried out prior to any form of status being conferred on the applicant. In this regard, the relevant regional and international agencies continue to provide most valuable assistance whenever the need arises.

47. Cooperation by these agencies has complemented the existing legal and administrative arrangements which are in place and so far have proved effective.

48. A recent Amendment to the **Immigration Act CAP. 190** contained in the Second Schedule of the **Anti-Terrorism Act, 2002**, classifies as prohibited entrants to Barbados, "persons who have been convicted of the offence of terrorism or in respect of whom there are reasonable grounds for believing that they have financed or facilitated acts of terrorism".

***"Calls* upon all states to:**

3(g) Ensure in conformity with international law, that refugee status is not abused by the perpetrators, organisers, or facilitators of terrorist acts, and that claims of political motivation are not recognised as grounds for refusing requests for the extradition of alleged terrorists;"

Question 3(g) Please provide a copy of the relevant provision of the Extradition Act relating to the recognition of claims of political motivation as grounds for refusing requests for extradition.

49. Barbados' **Extradition Act,** Section 7 (1) states in part as follows:

7. (1) "No fugitive may be surrendered under this Act:

(a) if the crime of which he is accused or alleged to have been convicted is an offence of a political character;"

(b) if the request for his surrender is in fact made for the purpose of prosecuting or punishing him on account of his race, tribe, religion, sex, nationality or political opinion, not withstanding that the request purports to be, made on account of an extradition crime,".

50. By virtue of amendments made to sections 7 and 47 of the **Extradition Act** by the Second Schedule to the **Anti-Terrorism Act, 2002,** terrorism offences are now stated NOT to be offences of a political character. Under Barbadian extradition law, therefore, a terrorism offence is regarded as not being "political", and is, in principle, extraditable;

51. Notwithstanding what has been said above, paragraph (b) of section 7 (1) of the **Extradition Act** quoted above has effect that Barbados must not surrender a fugitive "if the request for his surrender is in fact made for the purpose of prosecuting or punishing him on account of his…political opinion";

52. It should be noted that the combined effect of the above stated position of Barbadian law in relation to terrorist offences is to mirror the provisions of the Article 14 and 15 of the United Nations Convention on the Suppression of the Financing of Terrorism;

53. Attention is also drawn to Section 11, subsection (2) of the Anti-Terrorism Act, 2002, which, generally speaking, reinforces the exceptions provided for in section 7 (1) (b) of the Extradition Act quoted above, and mirrors Article 15 of the above-mentioned Convention.

Please provide a list of countries with which Barbados has concluded extradition treaties.

54. The information submitted at paragraph 38 is relevant in this regard.

55. As has been stated above in paragraphs 33 to 37 above), the **Extradition Act** CAP 189 is the Act which empowers Barbados to play its part in extraditing offenders to overseas countries and obtaining the extradition of offenders from overseas countries to Barbados;

56. By the Second Schedule to the **Anti-Terrorism Act 2002,** offences triable under that Act have now been added to the list of extraditable offences under the **Extradition Act;**

57. By a recent amendment to the **Money Laundering (Prevention and Control Act, 1998),** the offence of money laundering was added to the list of offences that are extraditable under the **Extradition Act.**

58. Barbados has also enacted a **Mutual Assistance in Criminal Matters Act,** CAP 140A. Under this Act, Barbados can give assistance to, and receive assistance from, overseas countries, on the basis of reciprocity, in prosecuting crime. Under this legislation, assistance can be given to and received from any country which has a bilateral treaty with Barbados in respect of mutual assistance in criminal matters, and also to and from any country which is a party to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 ("The Vienna Convention")

4. *Notes* with concern the close connection between international terrorism and transnational organised crime, illicit drugs, money laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard *emphasises* the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security.

Question (4) Has Barbados addressed any of the concerns expressed in paragraph 4 of the Resolution?

59. As indicated in its earlier report, the Government of Barbados and its Security and Law Enforcement Authorities share the Security Council's concerns about the inter-relationship among the various components of

transnational crime and are participating fully at the national, regional and international level in response to these threats to security. For small states like Barbados, security issues cannot be divorced from economic issues. Many of the emerging threats to international security are created or exacerbated by the fact that many of our societies are not capable of meeting the basic needs of their people. Poverty, inequity and injustice have always provided a fertile breeding ground for zealotry, fanaticism and criminal behaviour. The major threats to security which confront most of our governments in the early twenty-first century no longer centre on military confrontation between states, but involve the challenges posed by new and non-traditional threats, of which terrorism is only one component. Equally devastating to small vulnerable states are the threats posed by the illicit trafficking in narcotics and small arms, organised transnational crime, the pandemic of HIV/AIDS, the effects of economic disenfranchisement, poverty and social exclusion, environmental degradation and natural disasters. Our governments have not traditionally been structured to deal with such threats where the enemy is not definable and where the principal involvement is by non-state actors.

60. While small states are particularly vulnerable to these insidious new threats, no country can consider itself immune and given the trans-border nature of the threats, the only viable response is one which is coordinated at the multilateral level. It is for this reason that Barbados took the initiative at the recent General Assembly of the Organisation of American States, held in Bridgetown from June 2-4, 2002 to introduce the topic: "A Multidimensional Approach to Hemispheric Security" as the main theme of the Dialogue of Foreign Ministers. This theme will be further developed at the Hemispheric Security Conference in Mexico in 2003, where it is hoped that comprehensive strategies and mechanisms will be agreed upon to deepen cooperation and coordination in a hemispheric partnership to address these new security threats in a more focused manner.

61. At the sub-regional level, Barbados has actively participated in the work of the CARICOM Intergovernmental Task Force on Drugs (IGTF). This was established by the CARICOM Conference of Heads of Government at its Fifth Special Meeting in December 1996, and its main task is to formulate an integrated regional counter narcotics policy, covering all aspects of the drug trade. Since its establishment, the IGTF has proved to be a very useful mechanism in terms of coordinating anti-narcotics programmes in the region.

62. A CARICOM Task Force on Crime and Security was established in July 2001 by the CARICOM Heads of Government to study the fundamental causes of crime, violence and security threats in the region and to develop recommendations for a co-ordinated regional and/or sub-regional response. Barbados has also been involved in the work of this Task Force, which presented a comprehensive report to the Committee of Attorneys General on June 19, 2002. The issue will also be the subject of discussion at the CARICOM Heads of Government Conference in July, 2002.

63. At the international level it should be noted that, in addition to the agreements indicated in the previous submission to the UN Counter-Terrorism Committee, Barbados is also party to a number of bilateral and multilateral treaties which address various components of transnational security threats, including:

- Agreement Between the Government of Barbados and the Government of Venezuela for the Prevention, Control and Suppression of the Unlawful Consumption of or Traffic in Narcotics and Psychotrophic Substances-Signed July, 1987
- Agreement between the Government of Barbados and the Government of Great Britain and Northern Ireland concerning Mutual Assistance in relation to Drug Trafficking-Signed April, 1991
- United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psy[illegible]otropic Substances, Acceded October 1992

- Agreement between the Government of Barbados and the Government of Cuba to combat International Drug Trafficking-Signed November, 1993
- Agreement between the Government of Barbados and the United States of America to combat Narcotics- Signed September, 1996
- Caribbean United States Summit -Bridgetown Declaration of Principles-Signed May, 1997
- Agreement between the Government of Barbados and the Government of the United States of America concerning cooperation in Suppressing Illicit Maritime Drug Trafficking-Signed June 1997
- Memorandum of Understanding between the Government of Barbados and the Government of the Untied States of the America for Cooperation in Preventing and Combating Criminal Activities including the Illicit Traffic in Narcotic Drugs and Psychotropic Substances-Signed June 1997

Barbados has also signed the following conventions and is in the process of completing its ratification of the same:

- Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and other related Materials-Signed April, 2001
- Inter-American Convention against Corruption-Signed April, 2001
- Agreement between the Government of Barbados and the Government of Canada regarding the sharing of forfeited or confiscated Assets and equivalent funds on behalf of the Government of Barbados, Signed February, 2001
- United Nations Convention Against Transnational Organised Crime Signed September, 2001
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Organized Crime-Signed September, 2001
- Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime-Signed September, 2001
- Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Component and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime-Signed September, 2001
- Inter-American Convention Against Terrorism-Signed June, 2002

64. Barbados continues to be concerned that, as a small and vulnerable state, it has no capacity to defend itself against weapons of mass destruction and reiterates its strenuous objections to the continued use of the Caribbean Sea as a route for the transhipment of hazardous nuclear materials, which places all of the countries of the region at an increased risk of a potential catastrophe in the event of terrorist action or accident. This matter continues to occupy the attention of the Council for Foreign and Community Relations (COFCOR) of the Caribbean Community, which at its last meeting on May 8, 2002, issued a statement stressing that "the events of September 11, 2001 and the subsequent public revelations that nuclear options have indeed been explored by terrorist groups clearly demonstrate that the threat of nuclear accident or nuclear terrorism is very real. In these circumstances, and at a time when the international community is so heavily focused on security

issues, it is inconceivable that the dangerous shipments should be allowed to continue on a routine basis, without regard to the obvious and escalating risks to which they expose all societies in their transit path."

Other matters – Could Barbados provide an organizational chart of its administrative machinery, such as police, immigration control, customs taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen by your government as contributing to compliance with the Resolution ?

65. The relevant organisational chart is annexed to this Report.

Conclusion

66. In keeping with paragraph 1.4 of the Guidance for the Submission of Reports, pursuant to Paragraph 6 of Security Council Resolution (1373) 2001 of 28 September 2001, regarding the identification of areas in which states require additional guidance or technical assistance in implementing the resolution, the Government of Barbados reiterates its request for assistance in the implementation of some of the required counter-terrorism measures. Barbados is a small state with limited financial and technical resources relative to the demands of the fight against terrorism.

67. Traditionally, terrorism has not been a serious threat to this country and budgetary priorities have been focused towards the island's social and economic development, as well as the stated goal of the elimination of poverty. Sustaining this development focus is already threatened by the emphasis that must now be given to the non-traditional aspects of security as previously outlined. However, Government is cognisant of the very real threat posed by international terrorism and those who perpetrate terrorist acts. In these circumstances, the Government of Barbados remains committed to the fight against terrorism and will do all within its capacity to contribute to the international effort in this regard in keeping with the provisions of its Constitution and relevant international law. Barbados will however require financial and technical support from the international community if it is to avoid the destabilising diversion of its limited resources from priority development activities towards security issues, whose main beneficiaries will be the developed countries against which the majority of acts of terrorism are directed.

68. Technical assistance is required for law enforcement agencies including the Customs and Immigration Departments, through the acquisition and maintenance of appropriate technology including electronic surveillance and interception equipment for the Port and Airport as well as the training of personnel in counter-terrorism techniques including detection of fraudulent travel documents and where relevant, enhanced forensic capacity in biological and chemical detection.

69. Financial and Technical assistance as well as Training is specifically required for:

- The Task Force, Special Branch, and Intelligence Arms of the Royal Barbados Police Force
- Assistance for the relevant Legal professionals, in both civil and criminal matters with regard to drafting in the area of security and in the preparation of enabling legislation. Technical studies are also needed to review Barbados' legislative and administrative capacity to implement many of the necessary actions to fight terrorism and the financing of the same.

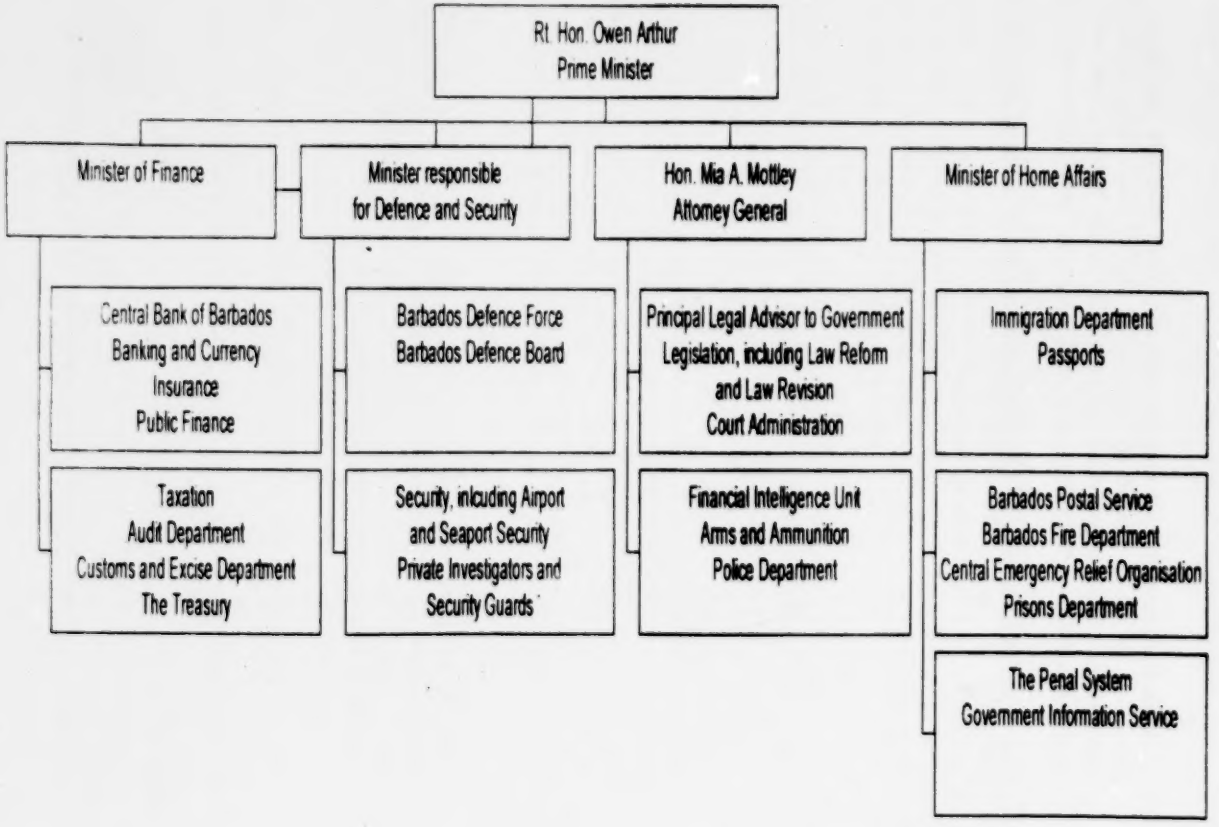
- IT assistance is required in the establishment of a comprehensive database, which allows for tracking suspicious movements and activities at the domestic, regional and international levels

- Appropriate hardware and software computer equipment to create an effective network linking the related law enforcement agencies, both nationally and regionally.

- Making Barbados' border control measures more effective and more efficient through the provision of early access to passenger, carrier and cargo information. This advance information should be provided electronically by the carriers, both airlines and ships, so that better profiling and targeting can be undertaken by Law Enforcement Agencies.

A comprehensive list of technical and financial assistance needs is annexed to the Report.

GOVERNMENT OF BARBADOS
ORGANISATIONAL CHART
LAW ENFORCEMENT AGENCIES



See Paragraph 65

Annexes to the supplementary Barbados report pursuant to paragraph 6 of Security Council resolution 1373 (2001)*

- Anti-Terrorism Act, 2002-6
- The Companies Act (CAP 308-Sec 15A)
- The Charities Act, CAP 243
- The Diplomatic Immunities and Privileges Act, CAP 18
- List of technical, financial and training requirements

* The annexes are on file with the Secretariat and are available for consultation.

United Nations S/2002/795

Security Council

Distr.: General
19 July 2002

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Letter dated 18 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 April 2002 (S/2002/459).

The Counter-Terrorism Committee has received the attached supplementary report from New Zealand, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

02-50443 (E) 150802

Annex

Letter dated 10 July 2002 from the Permanent Representative of New Zealand to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

On behalf of my Government, I have the honour to transmit to the Counter-Terrorism Committee a supplementary report to the report transmitted to the Committee on 24 December 2001, providing additional information on the measures taken by New Zealand to implement the provisions of Security Council resolution 1373 (2001) as requested by the Committee on 18 April 2002.

My Government remains ready to provide the Committee with any further information as may be required or requested by the Committee.

(*Signed*) Don **MacKay**
Permanent Representative

Enclosure

Supplementary report providing additional information on the measures taken by New Zealand to implement the provisions of Security Council resolution 1373 (2001)*

New Zealand is fully committed to combating international terrorism in all its forms and to co-operating with the United Nations, its Member States and particularly with the Counter-Terrorism Committee established by the Security Council pursuant to Resolution 1373 to combat international terrorism.

In December 2001 New Zealand submitted a report to the United Nations Security Council Counter-Terrorism Committee setting out steps New Zealand had taken to implement, and in accordance with, United Nations Security Council Resolution 1373 (2001). On 18 April 2002 New Zealand was asked by the Counter-Terrorism Committee to provide further information on issues addressed in the report.

The following information is provided in response to the Counter-Terrorism Committee's request.

Counter-Terrorism Committee question : Sub-paragraph 1 (a)

The report states that New Zealand will be in compliance with "most of the Special Recommendations on Terrorist Financing" of the Financial Task Force on Money Laundering (FATF) once the Terrorism Suppression Bill has entered into force. Please indicate which of the recommendations will remain to be complied with and explain why this is the case.

Pending the passage of the Terrorism Suppression Bill (formerly the Terrorism (Bombings and Financing) Bill) New Zealand is close to full compliance with the terrorist financing aspects of United Nations Security Council Resolution 1373 and FATF Special Recommendations I–V on Terrorist Financing. On enactment of that bill it is anticipated that New Zealand will be fully compliant with the relevant requirements of Resolution 1373 and FATF recommendations I-V.

Regarding Special Recommendation VI (relating to alternative remittance), while New Zealand does not have any licensing or registration system for informal money remitters, the activity of such persons is captured within the provisions of the Financial Transactions Reporting Act 1996. Under this Act, an individual in the business of money or funds transfer is caught by section 3(k)(v), and has to comply with the requirements for customer verification, suspicious transaction reporting and record keeping. Whether a person is in the business of money or funds transfer (or it is a principal part of the person's business) will be a matter of fact to be determined on a case-by-case basis (whether licensed or not, or mainstream or underground). These provisions meet a key objective behind the recommendation of making such networks subject to the requirements of the anti-money laundering and anti-terrorist financing regime.

Regarding Special Recommendation VII (relating to wire transfers), while New Zealand may not comply with a literal interpretation of this recommendation in practice New Zealand meets its object. The New Zealand Government does not have legislation that sets out the appropriate guidelines for financial institutions making funds transfers as such guidelines are normally developed by industry groups. Those financial institutions belonging to the SWIFT system are required to meet its guidelines and these are likely to be revised to address this Special Recommendation.

* The annexes are on file with the Secretariat and are available for consultation.

New Zealand has not reached a final view on compliance with Special Recommendation VIII (relating to non-profit organisations) as it is awaiting clarification from FATF on the exact requirements that the recommendation imposes on member states.

Government agencies are continuing work on assessing what further measures may be necessary and desirable to ensure greater compliance with the requirements of Recommendations VI-VIII, taking into account their overall objectives and the extent of flexibility allowed to states to use different mechanisms where these can achieve the desired objective.

Please provide progress reports on the Terrorism Suppression Bill and the second terrorism bill to be introduced in Parliament in 2002.

The Terrorism (Bombings and Financing) Bill (now renamed the Terrorism Suppression Bill) was introduced to Parliament in April 2001. After the Security Council adopted Resolution 1373, the Government decided to amend the bill to include additional provisions to implement key aspects of the Resolution.

In accordance with normal Parliamentary procedures, the parliamentary Select Committee that was considering the bill sought public submissions on the new provisions and held public hearings in January 2002. Over the following two months the committee considered what further amendments should be made to the bill in light of the concerns expressed in the public submissions. Many of these concerns related to the nature and scope of the offences, the definition of "terrorist act", and the need to ensure that the proposed measures did not adversely impact on fundamental human rights. The amended bill was reported back to Parliament in late March and is currently awaiting its second reading.

New Zealand will hold a general election on 27 July 2002 and, as a result, Parliament has stopped sitting. Many bills, including the Terrorism Suppression Bill have been carried over to the new Parliament. It must meet by late September, although may well resume at an earlier date. It will now be some months before the Terrorism Suppression Bill can be passed.

When it became apparent last year that there would be some delays in passing the bill, regulations were made under the United Nations Act 1946. The UN Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2001 were intended to be a short-term measure to ensure New Zealand compliance with key aspects of Resolution 1373 in the period before the bill became law. The regulations were due to expire on 30 June 2002, as it was thought the bill would be passed by then. However, due to the election it has recently been necessary to extend the regulations. They now expire on 31 December 2002, with the date again being chosen in the expectation that the bill will be passed by then.

A Terrorism (Counter-terrorism) Bill is currently being drafted, to pick up on those parts of Resolution 1373 not dealt with by the Terrorism Suppression Bill. The second bill will pick up issues such as the harboring of terrorists, hoaxes and the listing of terrorist activity as an aggravating factor for purposes of the sentencing of persons charged with crimes carried out for a terrorist purpose. Once drafting is completed final Cabinet approvals will be sought for introduction to Parliament later this year.

Counter-Terrorism Committee question : Sub-paragraph 1 (c)

The report states that the new Terrorism Suppression Bill will contain an obligation to report suspicious transactions to the Police. Will this obligation extend to financial intermediaries outside the main financial sector (e.g lawyers)? If so, what are the penalties proposed if such persons omit to report either wilfully or by negligence?

Clause 17R of the Terrorism Suppression Bill includes an obligation to report suspected terrorist property to the Police. The provision is based on a similar provision in the Financial Transactions Reporting Act 1996 which relates to the reporting of suspicious financial transactions in the context of money laundering and the proceeds of

crime. The Terrorism Bill has used the definition of the term "financial institution" found in section 3 of the Financial Transactions Reporting Act, which therefore includes a wide range of entities. That section states that lawyers fall within the section "to the extent that the lawyer receives funds in the course of that person's business for the purposes of deposit or investment; or for the purpose of settling real estate transactions".

However, because Resolution 1373 prohibits dealings in property generally (not just financial transactions), the reporting obligation in the bill is more extensive than that in the Financial Transactions Reporting Act and applies not only to financial institutions but also to any person who suspects, on reasonable grounds, that particular property in their possession or control, is or may be property to which the section applies (i.e. belonging or linked to individuals or groups that have been designated as "terrorist entities"). The bill goes on to prescribe the contents of the report that must be made to the New Zealand Police and the manner in which it is to be submitted, with the requirements differing slightly according to whether or not the person reporting is a financial institution.

A person who knowingly fails to report suspicious property commits an offence for which the maximum penalty is imprisonment for one year. A fine can also be imposed in the case of a financial institution but the bill does not prescribe the maximum amount.

It should also be noted that the UN Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2001 currently imposes a similar obligation to report suspected terrorist property to the New Zealand Police.

Counter-Terrorism Committee question : Sub-paragraph 1 (d)

How does the financial tracking system ensure that funds received by associations are not diverted from their stated purposes, in particular, to terrorist activities?

Financial institutions in New Zealand are required to adhere to "know your customer" principles in accordance with the provisions of the Financial Transactions Reporting Act 1996. Accordingly, where associations maintain bank or other accounts the flow of funds in and out of those accounts will be subject to ongoing due diligence scrutiny by the relevant New Zealand financial institution. Moreover, scrutiny of these types of accounts is likely to be relatively stringent because of the nature of associations and the ordinary banking risks that they pose. These risks exist because the accounts are operated with multi-signatories, who are acting on behalf of an organization that normally does not have significant assets and where the financial institution must be assured about the legitimate authority of those issuing payment instructions on the account.

Accordingly, payments into the accounts not related to the usual activities of an association of that type, (i.e transfers overseas or large scale cash withdrawals) are likely to be construed as out of the ordinary and therefore potentially suspicious. As noted above financial institutions have a current obligation under the UN Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2001 to report to the New Zealand Police anyone they suspect may be holding funds linked to designated terrorists.

More generally financial institutions are required under the Financial Transactions Reporting Act to report any transactions that they suspect as being linked to money laundering to the New Zealand Police. Therefore, the New Zealand financial system places reliance on "know your customer" principles to monitor account activity to ensure that funds in those accounts are not diverted to terrorist activities.

Charitable organizations diverting funds to terrorist activities would be caught by the regimes under both the existing regulations and the Terrorism Suppression Bill. This issue will, however, be further considered in the context of the Working Group on Charities which is currently looking at the possible establishment of a Charities Commission which will keep general oversight of all charity related issues.

Counter-Terrorism Committee question : Sub-paragraph 2(a)

Please describe the mechanism under domestic law that prevents weapons from being supplied to terrorists within New Zealand.

The Terrorism Suppression Bill will provide that any form of property for designated terrorist entities (or associated entities) will be prohibited, which includes the supply of weapons.

Pending the passing of the Bill, the current relevant legislative prohibition depends on the nature of the weapon concerned. For example, the sale, ownership or carriage of firearms is tightly restricted under the terms of the Arms Act 1983. The process for vetting applicants for a firearms licence involves background inquiries by New Zealand Police as to the suitability of the applicant (i.e fit and proper person test). An applicant for a licence to supply firearms is subject to additional scrutiny. Similar checks are conducted concerning the supply of explosive substances. Possession of an offensive weapon, as defined in statute, is prohibited by the terms of the Crimes Act 1961, as is the supply.

The New Zealand Nuclear Weapon Free Zone, Disarmament and Arms Control Act implements the Nuclear Non-Proliferation Treaty (NPT) 1968 and the Biological Weapons Convention 1972. Under s 5 of this Act it is an offence for any New Zealand citizen or person ordinarily resident in New Zealand to manufacture, acquire, or possess, or have control over any nuclear device, or to aid, abet, or procure any person to manufacture, acquire, possess, or have control over any nuclear device within the New Zealand Nuclear Free Zone. Additionally, no New Zealand citizen or resident who is a servant or agent of the Crown may engage in any of these activities beyond the New Zealand Nuclear Free Zone. It is also an offence under s 8 for any person to manufacture, station, acquire, or possess, or have control over any biological weapon in the New Zealand Nuclear Free Zone.

The Chemical Weapons (Prohibition) Act 1996 implements the Chemical Weapons Convention 1993 (CWC) and it is an offence under this act to develop, produce, acquire, stockpile or retain chemical weapons. In addition, the Act applies extraterritorially to all New Zealand citizens and persons ordinarily resident in New Zealand. It also establishes a system of monitoring and verification for activities with certain toxic chemicals and their precursors as well as setting up a domestic permit system for all imports and exports of scheduled chemicals and precursors.

Legislation implementing the 1979 Convention on the Physical Protection of Nuclear Materials currently being worked on will further strengthen existing legislation by creating crimes related to the unlawful possession, use or transfer of nuclear material, and use or threat of use of it in a terrorist act.

Counter-Terrorism Committee question : Sub-paragraph 2(b)

What is the mechanism for inter-agency cooperation between the authorities responsible for narcotics control, financial tracking and security, with particular regard to border controls preventing the movement of terrorists?

New Zealand has mechanisms for inter-agency cooperation with authorities responsible for narcotic control, financial tracking and security.

Firstly, the New Zealand Police, which is a unified national Police service and responsible for coordinating New Zealand's law enforcement response to terrorism, coordinates a National Drug Intelligence Bureau (NDIB). The NDIB is jointly staffed by the New Zealand Customs Service and Police, and provides national coordination of illicit drug related matters. Police and Customs work closely with the Ministry of Health on the structure of regulations for controlling misuse of drugs.

The NDIB forms part of the National Bureau of Criminal Intelligence (NBCI). Police have recently established another unit within the NBCI namely the Strategic Intelligence Unit. This unit will have as one of its roles a focus on counter terrorist intelligence.

In relation to financial tracking, New Zealand is a member of both the Financial Action Taskforce on Money Laundering and the Asia Pacific Group on Money Laundering. It is one of the few jurisdictions that has established a Financial Intelligence Unit (FIU) with the Police, which reflects both the ability of the Police to undertake this role, and perhaps the economies of scale within New Zealand: New Zealand is an island nation some 2000 kilometres from its nearest neighbour and has a population of just 3.8 million. New Zealand has a small financial sector that is dominated by five main trading banks, and these in turn have a sound working relationship with the FIU. According to legislation, the definition of "financial institution" includes remittance agents, who are therefore subject to the anti-money laundering regime set in place by the Financial Transaction Reporting act 1995.

In addition to the two matters set out above, New Zealand has established a Combined Law Agency Group (CLAG) that meets at a regional and national level. This group includes departmental officials from both the Immigration and the Internal Affairs Departments. A strong coordination is maintained between officials responsible for the movement of people across New Zealand's border and other law enforcement officials.

Matters that have a 'security' concern are focused on by the Domestic and External Security Secretariat (DESS), which is a part of the Department of Prime Minister and Cabinet. DESS is responsible for coordinating New Zealand's response to security issues, including terrorism related matters. Coordination covers a range of government agencies, including the New Zealand Security Intelligence Service and Police.

Counter-Terrorism Committee question : Sub-paragraph 2(c)

Please provide an outline of and, if possible, an internet reference for, the law in which the "extradite or prosecute" obligations have been enacted in order to implement the anti-terrorism treaties to which New Zealand is a party.

New Zealand is currently party to 9 of the 13 terrorism conventions and protocols. (New Zealand regards the Convention on the Safety of United Nations and Associated Personnel as falling within this group.)

Terrorism involving aircraft

New Zealand is party to all four instruments dealing with terrorism involving aircraft:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963)
- the Convention for the Suppression of Unlawful Seizure of Aircraft (1970);
- the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971); and
- the Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988)

The implementing legislation for these instruments is the Aviation Crimes Act 1972 (as amended in 1999). To assess how the "extradite or prosecute" rule has been implemented it is necessary to look at the offences themselves and the provisions relating to jurisdiction and extradition. The Aviation Crimes Act makes the conduct proscribed by the various instruments a crime under New Zealand law. However, certain jurisdictional limits apply to prosecutions involving conduct that occurs wholly outside New Zealand. In addition, before a prosecution can commence the consent of the Attorney-General is required. The relevant provisions are as follows:

(a) Hijacking (section 3)

This section makes hijacking an offence punishable by life imprisonment under New Zealand law in relation to aircraft in flight in or outside New Zealand. However, section 9(1) states that New Zealand courts do not have jurisdiction where both the place of take-off and the place of actual landing of the aircraft (not being a New Zealand aircraft) are in the territory of the country in which the aircraft is registered, or, in the case of an aircraft that is subject to joint or international registration, in the territory of one of the countries having an interest in the aircraft, unless one of four exceptions applies. The two that are relevant to the "extradite or prosecute" rule are those giving extraterritorial jurisdiction over an alleged offender who is either a New Zealand national or resident or present in New Zealand.

New Zealand's Extradition Act 1999 allows the extradition of a person for any offence that carries a penalty of 12 months imprisonment or more. As noted further below New Zealand no longer requires extradition treaties in order to extradite to non-Commonwealth countries. Where, however, New Zealand has an extradition treaty with a State that is party to the Hijacking Convention, the offence of hijacking is deemed, for the purposes of New Zealand's domestic law, to be included in the bilateral treaty (section 7(1)).

(b) Crimes committed in connection with hijacking (section 4)

This offence applies to crimes committed on board an aircraft in flight outside New Zealand that would be a crime, if committed within New Zealand. The maximum penalty is that which would have applied, had the particular crime been committed in New Zealand.

(c) Other crimes relating to aircraft (section 5)

This offence relates to specified acts done in or outside New Zealand involving aircraft (for example, committing an act of violence on board an aircraft which is likely to endanger the aircraft or destroying an aircraft in service). The maximum penalty is 14 years imprisonment. The jurisdiction provisions are the same as those for hijacking, with the New Zealand courts having extraterritorial jurisdiction over an alleged offender who either is a New Zealand national or resident or is present in New Zealand (section 9(2)). Like hijacking this offence is deemed, for the purposes of New Zealand's domestic law, to be included in bilateral extradition treaties with other States Parties to the relevant Convention (section 7(2)).

(d) Crimes relating to international airports (section 5A)

This offence, which applies to certain acts done in or outside New Zealand that endanger or are likely to endanger the safety of an international airport, carries a maximum penalty of 14 years imprisonment, with life imprisonment being the maximum if the conduct also amounts to murder or manslaughter. New Zealand courts have jurisdiction in relation to conduct that occurred wholly outside New Zealand if the alleged offender is present in New Zealand (section 9A). This offence is deemed, for the purposes of New Zealand's domestic law, to be included in bilateral extradition treaties with other parties to the Montreal Protocol (section 7A(1)).

(e) Taking firearms, explosives etc onto an aircraft (section 11)

This offence, which carries a maximum penalty of 5 years imprisonment, relates to the taking of firearms or other offensive weapons on board aircraft. There are no special rules on jurisdiction or extradition for this offence, which is derived from the 1963 Convention.

Terrorism involving ships and fixed platforms

In 1999, New Zealand became party to the Rome Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988) and its Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.

The implementing legislation for these instruments is the Maritime Crimes Act 1999 which follows a similar structure to the Aviation Crimes Act. It creates two sets of offences, crimes relating to ships (section 4) and crimes relating to fixed platforms (section 5), both of which carry a maximum penalty of 14 years imprisonment, with life imprisonment being the maximum if the conduct also amounts to murder or manslaughter. The Act provides for New Zealand courts to have jurisdiction in respect of conduct that occurs wholly outside New Zealand in certain circumstances, including where the alleged offender is present in New Zealand (section 9). Section 17 provides that no proceedings can be instituted in any court without the consent of the Attorney-General. As under the Aviation Crimes Act, the Maritime Crimes Act deems these offences to be included in bilateral extradition treaties with other States Parties to the Convention or Protocol.

Terrorist acts against persons

New Zealand is a party to all three conventions involving terrorist acts against persons:

- the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (1973);
- the Convention Against the Taking of Hostages (1979); and
- the Convention on the Safety of United Nations and Associated Personnel (1994)

The implementing legislation for these conventions is the Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980. The Act was amended in 1998 to encompass the UN Personnel Convention.

The 1980 Act follows the similar structure to the other legislation and creates the following crimes:

- crimes against international protected persons and UN and associated personnel whether in New Zealand or elsewhere (section 3). The maximum penalty is the same as for that conduct under New Zealand's general criminal law;
- crimes against premises or vehicles of a protected person whether in New Zealand or elsewhere (section 4);
- threats against such persons, premises or property whether in New Zealand or elsewhere (sections 5 and 6). The maximum penalty is 7 years imprisonment.
- hostage taking in or outside New Zealand (section 8). The maximum penalty is 14 years imprisonment.

There are no additional relevant jurisdictional provisions that limit the circumstances in which a person present in New Zealand who is not extradited could be prosecuted. However, the Attorney-General's consent is required to any prosecution for these crimes. Section 10 deems these crimes to be included in bilateral extradition treaties with States Parties.

(The Committee asks for internet references to the implementing legislation relating to "extradite or prosecute" obligations. New Zealand is in the process of establishing a comprehensive database for its legislation. At present there is only a somewhat rudimentary website on which legislation may be viewed without cost: www.gplegislation.co.nz (access each individual statute by its name).)

Counter-Terrorism Committee question : Sub-paragraph 2(f)

What is the legal timeframe within which a request for judicial assistance in criminal investigations or criminal proceedings relating to the financing or other support of terrorist acts is required to be met and how long, on average, does it actually take in practice to implement such a request in New Zealand?

There is no 'legal' timeframe within which a request from New Zealand for foreign assistance with respect to a terrorist matter must be met. Similarly, there is no legal timeframe within which New Zealand must respond to a request. The circumstances and exigencies of the particular case will determine the timeframe within which the request is fulfilled. Where a request is made to New Zealand for assistance in an investigation or criminal proceeding concerning terrorism, the New Zealand authorities would treat the request as a matter of priority and would endeavour to respond to the request as soon as is practicably possible.

How long a request of any sort takes to implement will depend on the complexity of the request and the nature of the help sought. It could take a couple of days longer to process a formal mutual assistance request as opposed to an informal one. This reflects the fact that, where a formal request is made and dealt with under the Mutual Assistance in Criminal Matters Act 1992, certain procedures have to be followed, for example, certain documentation has to be prepared for the Solicitor-General who decides, on behalf of the Attorney-General, whether to grant the request. - Again, however, the time required would depend on the nature of the request.

Where a request seeks evidence for use in later proceedings and no particular urgency attaches (for instance, there is no likelihood that evidence will be destroyed or eye witness evidence lost) then the response time may be extended. Where, by contrast, the matter is urgent, or where search warrants have to be executed or enquiries made in a timely fashion, the request will be dealt with as soon as it is reasonably possible and could well be completed within days or a week.

Counter-Terrorism Committee question : Sub-paragraph 3 (a)

According to the report, the New Zealand authorities are currently drafting an Interception Capability Bill, which will require all telecommunications network operators to make their networks interception-capable and will require others, such as Internet providers, to provide assistance to the police and the intelligence agencies, if called upon. Please provide the CTC with a copy of, or an internet reference for, this legislation.

The New Zealand Cabinet gave policy approvals for interception capability legislation in December 2001. The drafting of the Bill has now been completed but final Cabinet approvals and the introduction of the Bill to Parliament have been deferred due to the general election to be held on 27 July 2002. Accordingly, the Bill is not yet publicly available nor is there an internet reference available at this time, however both will be supplied at the first opportunity.

Counter-Terrorism Committee question : Sub-paragraph 3 (c)

The CTC would be grateful to know with which countries New Zealand has entered into bilateral treaties on extradition and mutual legal assistance.

Extradition

New Zealand modernised its extradition law in 1999. Before the Extradition Act 1999 was passed New Zealand needed an extradition treaty in order to extradite a person to a non-Commonwealth country. In the case of a Commonwealth country it was able to use its statutory regime, derived from the Fugitive Offenders Act 1881 (UK). The new Act has retained this regime for Commonwealth countries but gives greater flexibility to deal with requests from other countries.

While New Zealand will continue to enter extradition treaties from time to time with countries that require treaties to extradite to New Zealand and with which there is likely to be ongoing traffic, it can now deal with requests on an *ad hoc* basis, relying on its statutory regime (section 60). If a request is received from a country with which New Zealand does not have a formal extradition relationship it is open to the Minister of Justice to grant the request, taking into account various factors, such as whether the other country could reciprocate in similar circumstances. If the request relates to an offence in an international convention and both New Zealand and the other country are parties, that is regarded as sufficient reciprocity. Where the Minister allows the request to proceed, it is dealt with under Part 3 of the Act which requires the requesting country to provide sufficient evidence to show that a *prima facie* case exists against the person sought.

If New Zealand has an ongoing or more formal extradition relationship with a country, which may or may not be treaty-based, it can allow that country to use one of two simplified extradition procedures. For example, a simplified extradition process applies between New Zealand and Australia involving the "backing" of arrest warrants (which allows their direct enforcement in the other country). With this procedure, the requesting country does not have to provide evidence that a *prima facie* case exists and the court process required is therefore more straightforward.

New Zealand currently has extradition treaties with the following countries: the United States of America (1970), the Republic of Fiji (1992), Hong Kong Special Administrative Region of the People's Republic of China (1998), and the Republic of Korea (2001). In addition, New Zealand has succeeded to a number of British extradition treaties that date back to the 19th century. Attached, as Annex 1, is Schedule 1 of the Extradition Act, which lists the treaties which are still regarded as in force under New Zealand law.

Mutual Assistance in Criminal Matters

The Mutual Assistance in Criminal Matters Act 1992 allows for both the giving of certain types of assistance in criminal investigations and proceedings to other countries and the making of such requests by New Zealand. The original objective of the Act was to implement the mutual assistance provisions of the Commonwealth Scheme on Mutual Assistance and the UN Convention on Narcotic Drugs and Psychotropic Substances (1988). However, the Act is wider in scope and applies equally to both Commonwealth and non-Commonwealth countries and to a broad range of offending. The range of assistance includes taking evidence and enforcing orders relating to the proceeds of crime.

New Zealand has formalised its mutual assistance arrangements with the following countries by prescribing them under the Act. They fall into two categories:

- those with which New Zealand does not have a mutual assistance treaty: Australia (1993); Niue (1996); the United States of America (1998); the United Kingdom (1999); and Fiji (1999).
- those with which New Zealand has a mutual assistance treaty: Hong Kong (1999) and the Republic of Korea (2000). (It is currently in negotiations with Singapore.)

As with the Extradition Act, the Mutual Assistance Act allows for assistance to be given to a requesting country with which New Zealand has no treaty or other formal mutual assistance relationship. The Attorney-General may grant *ad hoc* requests for assistance. Before doing so the Attorney-General must consider the object of the Act (to facilitate the provision and obtaining, by New Zealand, of international assistance in criminal matters); whether that country would entertain a similar request by New Zealand; the seriousness of the offence; and any other matters the Attorney-General considers relevant. As with ad hoc requests under the Extradition Act, if the requesting country is a party to an international convention that contains a mutual assistance obligation and the request relates to an offence within the scope of that particular convention that is regarded as sufficient reciprocity.

Counter-Terrorism Committee question : Sub-paragraph 3 (d)

Please provide a progress report on the ratification processes as well as copies of, or internet references for, the implementing legislation for the international conventions and protocols relating to terrorism to which New Zealand is already a party.

As noted above New Zealand is currently party to 9 of the 13 international instruments on terrorism. The enactment of the Terrorism Suppression Bill will enable New Zealand to accede to the Bombings Convention (which it had not signed before the closing date specified in the Convention) and to ratify the Financing Convention (which New Zealand signed on 7 September 2000). (For further information on progress with this bill see the answer to sub-paragraph 2(c) above.)

A second anti-terrorism bill (the Terrorism (Counter Terrorism) Bill) is planned for later this year. This bill will also include the provisions needed to implement two other terrorism conventions to which New Zealand is not yet party: the Convention on the Physical Protection of Nuclear Material (1979) and the Convention on the Marking of Plastic Explosives (1991). Once both bills are passed New Zealand will be party to all the international instruments on terrorism.

New Zealand has recently enacted its legislation to implement the UN Convention against Transnational Organised Crime and its two Protocols on the Smuggling of Migrants and Trafficking in Persons. It expects to ratify all three instruments in the very near future. The measures taken to implement the Migrants and Trafficking Protocols are also relevant to the implementation of paragraph 2(g) of Resolution 1373. This involved a review of the offence regime in the Passports Act 1992. The Passports Amendment Act 2002 has overhauled the existing offences in the Act and created a number of new offences, all with higher penalties and aimed at combating the misuse of New Zealand travel documents.

Please see the answer to question 2 (c) above for the implementing legislation for the international conventions and protocols relating to terrorism to which New Zealand is already a party.

Counter-Terrorism Committee question : Sub-paragraph 3 (f)

Have the offences set forth in the relevant international conventions and protocols relating to terrorism been included as extraditable offences in the bilateral treaties to which New Zealand is party?

The approach taken by New Zealand is to include a provision in its implementing legislation that deems the offences in the particular international convention to be treated, for the purposes of New Zealand law, as extraditable offences in bilateral extradition treaties with other States Parties. The relevant provisions are sections 7 and 7A of the Aviation Crimes Act 1972 (as amended in 1999); section 14 of the Maritime Crimes Act 1999; and section 10 of the Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980.

Even in the absence of these provisions New Zealand would be able to grant a request for extradition relating to a terrorism offence, relying on the *ad hoc* request provisions of the Extradition Act described in the answer to the question under sub-paragraph 3(c) above.

New Zealand's preferred approach in its modern extradition treaties is not to list offences individually but rather to allow extradition for all offences that carry a certain minimum penalty. This allows extradition for a wide range of offences without the need to amend the treaty in order to add to the list, as amendments can often take a long time.

Counter-Terrorism Committee question : Sub-paragraph 4

Has New Zealand addressed any of the concerns expressed in paragraph 4 of the resolution?

As noted above the New Zealand Parliament recently enacted legislation to implement the UN Convention against Transnational Organised Crime and its two Protocols on the Smuggling of Migrants and Trafficking in Persons. It expects to ratify all three instruments in the very near future.

The legislation included an amendment to the Crimes Act 1961 to create two new offences of "smuggling migrants" and "trafficking in persons", both of which carry heavy maximum penalties of 20 years imprisonment and/or a $500,000 fine and are aimed at those in the business of people smuggling or trafficking. The Crimes Amendment Act also broadens the offence of participating in a criminal group to cover groups that operate transnationally and expanded the jurisdiction provisions for offences that fall within the Convention and Protocol to allow prosecution in New Zealand courts in a wider range of circumstances where the offence is committed wholly outside New Zealand territory.

Other measures include an amendment to the Customs and Excise Act 1996 to extend Customs' powers to intercept boats in the contiguous zone; changes to the Immigration Act 1987 to ensure that the necessary range of powers exists to deal with those who arrive in remote areas rather than at a Customs place; new Immigration Act offences with higher penalties; and new offences in the Passports Act 1992 to combat the misuse of New Zealand travel documents.

New Zealand has also been working through Pacific regional fora to support strong regional coordination to address transnational criminal issues such as international terrorism, drug trafficking, money laundering, weapons control and people smuggling.

Counter-Terrorism Committee question : 'Other matters'

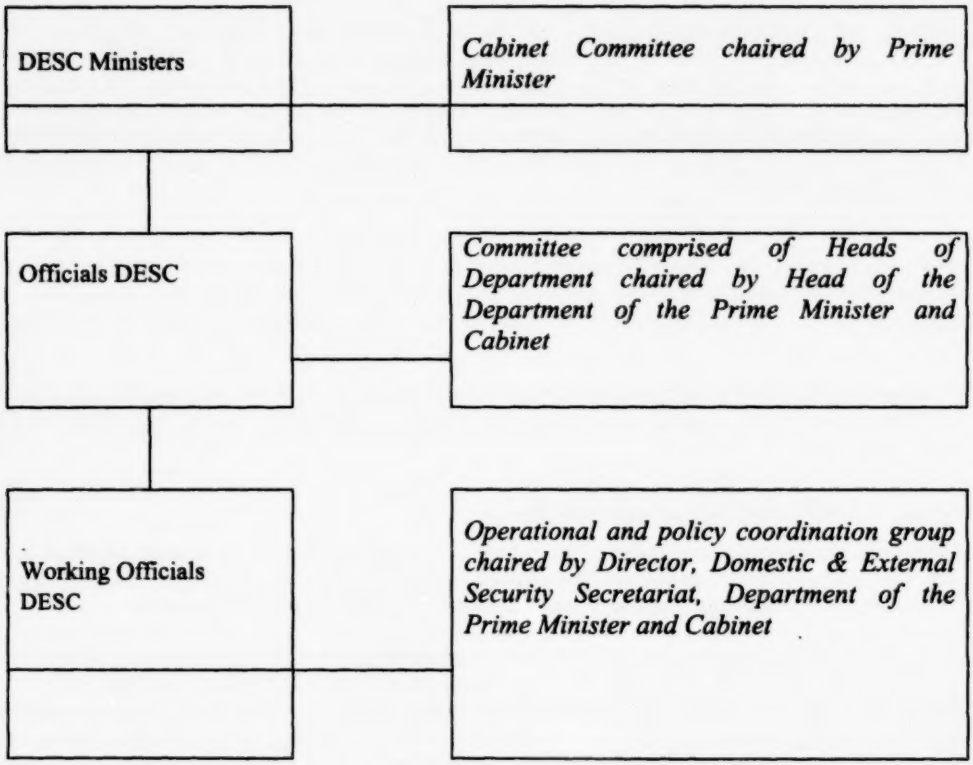
Could New Zealand please provide an organisational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the Resolution.

New Zealand has a relatively straightforward organisational structure/administrative machinery as central government agencies have total responsibility for policing, immigration, customs, taxation and financial supervision without any of the complexity faced by jurisdictions with federal and state levels of government.

The New Zealand organisational responsibilities for the areas identified by the Counter-Terrorism Committee are as follows:

Police	New Zealand Police Serious Fraud Office
Immigration Control	New Zealand Customs and New Zealand Immigration Service
Customs	New Zealand Customs Service
Taxation	Inland Revenue Department
Financial Supervision Authorities	Reserve Bank (supervision of banks); Ministry of Economic Development (regulation of business activity including competition); New Zealand Police (investigation of suspicious transactions and property reported by banks, financial institutions and others)

The coordination of the activities of these government agencies in relation to counter-terrorism and contributing to compliance with Resolution 1373 is accomplished through the Domestic and External Security Coordination system within the Department of the Prime Minister and Cabinet. Within this system individual departments retain their specific responsibilities/accountabilities to their government minister but do so in a framework that ensures activity is coordinated and contributes to whole-of-government outcomes. This coordination covers both operational and policy responses. The following organizational chart shows the concept of the DESC system:


DESC Ministers
Cabinet Committee chaired by Prime Minister
Officials DESC
Committee comprised of Heads of Department chaired by Head of the Department of the Prime Minister and Cabinet
Working Officials DESC
Operational and policy coordination group chaired by Director, Domestic & External Security Secretariat, Department of the Prime Minister and Cabinet

Specifically in relation to action taken by New Zealand to suppress terrorist financing, the administrative machinery is as follows:

Present Situation

Entities or individuals on terrorist lists promulgated by the UN are actioned by the Ministry of Foreign Affairs and Trade through the UN Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2001 passed under the United Nations Act 1946. These regulations give effect to Resolution 1373 by requiring that the resolution's measures apply to the entities specified, currently those that have been designated under by the Security Council's Afghanistan Committee. The regulations are notified by the Reserve Bank and financial institutions are then obliged under the regulations to report any funds linked to terrorist organisations or individuals to the New Zealand Police who then trigger the freezing mechanism.

Situation Following Passage of the Terrorism Suppression Bill

The Terrorism Suppression Bill will enable the designation of organisations or individuals as terrorists and provide for the freezing of the assets of these terrorist entities once designated. The attached chart (Annex 2) outlines the administrative machinery that will be used to implement the designation procedure in the Bill once enacted. Following notification, financial institutions and others in possession of suspicious property will be obliged to report suspicions regarding property linked to the designated entities to the New Zealand Police who then trigger the property freezing mechanism.

Conclusion

New Zealand is committed to meeting its obligations under Resolution 1373. Much work has been done domestically to ensure that New Zealand complies with Resolution 1373 as illustrated by the counter-terrorism legislation currently before Parliament and the additional legislation that is planned. New Zealand also continues to contribute military, intelligence and political support to the international campaign against terrorism.

United Nations S/2002/796

Security Council

Distr.: General
19 July 2002

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Letter dated 18 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 April 2002 (S/2002/445).

The Counter-Terrorism Committee has received the attached supplementary report from Brazil, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2002) concerning counter-terrorism

02-50459 (E) 130802 160802

Annex

Letter dated 8 July 2002 from the Permanent Representative of Brazil to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

In response to your letter dated 15 April 2002, I have the honour to enclose herewith a complementary Brazilian report to the Counter-Terrorism Committee, pursuant to paragraph 6 of Security Council resolution 1373 (2001), with further information regarding the matters identified in the above-mentioned correspondence.

(*Signed*) Gelson **Fonseca Jr.**
Ambassador
Permanent Representative of Brazil to the United Nations

Enclosure

[Original: Spanish]

Supplementary report submitted to the Security Council Counter-Terrorism Committee on implementation of Security Council resolution 1373 (2001)

1. **Subparagraph 1 (a)**

Text of the resolution: "*Decides* that all States shall:

"(a) Prevent and suppress the financing of terrorist acts;"

Question: *Please outline the provisions of Act No. 9613/98 and explain how these provisions achieve the implementation of this subparagraph.*

Reply: Act No. 9613 of 3 March 1998 characterizes the offences of laundering or concealing property, rights and assets and seeks to prevent the use of the financial system to carry out the unlawful acts specified therein.

Article 1 of the Act lists the offences that may give rise to money-laundering. These include terrorism (art. 1, para. II). Money-laundering is considered to be a separate offence from that which generated the funds and is punishable by three to ten years' imprisonment and a fine (in addition to forfeiture of the funds).

Act No. 9613/98 qualifies as a crime the provision, directly or indirectly, by any physical or legal person of any funds, financial claims, economic or financial resources or other related financial services to persons who perpetrate or intend to perpetrate, facilitate or participate in the carrying out of such acts, or to entities that are owned or controlled, directly or indirectly, by such persons, or to persons or entities acting on their behalf or at their direction.

Under article 14 of Act No. 9613/98, financial institutions are required to report to the Financial Activities Control Council (COAF) of the Ministry of the Treasury all operations considered to be suspicious. COAF, in turn, will ensure that proceedings are initiated as appropriate when it is determined through evidence or it is believed that there is sufficient evidence that crimes are being committed.

Article 8 of Act No. 9613/98 further stipulates that, at the request of the competent foreign authorities, a judge may, independently of any international treaty, order the seizure or attachment of property, rights or assets derived from crimes carried out abroad when the Government of the requesting country has agreed to reciprocity with Brazil.

Act No. 9613/98 establishes the administrative responsibility of legal persons for the offences set out therein. Enterprises and other financial institutions operating in the marketplace are required to report any suspicious operations to COAF.

As currently drafted, Act No. 9613/98 makes the financing of terrorism through the unlawful activities listed in article 1 thereof a punishable offence and promotes collaboration among the country's principal economic actors in this area. The public authorities are being provided with instruments to combat efforts to conceal the illegal origin of funds obtained through criminal means and often

diverted to finance criminal activities. Thus the Act's broadest objective is to weaken criminal organizations and make the perpetration of crimes more difficult.

Question: *Describe how the federal laws relating to anti-terrorism are implemented in Brazil's states. How is coordination achieved amongst the enforcing agencies of the federal and state Governments on the one hand and among state agencies?*

Reply: In Brazil responsibility for anti-terrorist activities lies chiefly with the Ministry of Justice and the Institutional Security Cabinet in the Office of the President of the Republic.

The Ministry of Justice holds terrorism to be a threat to public order. The National Secretary for Public Security, whose post was created by Decree No. 3695/2000, has responsibility for coordinating the activities of security bodies in national territory through the Public Security Intelligence Subsystem (SISP).The constituent bodies of SISP are the Institutional Security Cabinet in the Office of the President of the Republic, the Ministry of Defence, the Ministry of Regional Integration (Civil Defence), the Ministry of the Treasury (the Federal Tax Department and COAF), the Federal Police Department, the Federal Highway Police and the Brazilian Intelligence Agency (ABIN). Within their particular areas of competency, members identify, monitor and evaluate real or potential threats to public security and prepare studies and reports in support of action to neutralize, curb and punish criminal acts of any type, including terrorism. The Ministry of Justice interacts with Brazil's federal units (states) chiefly through the Federal Police Department, the Department of Alien Affairs, the Department for the Coordination of Joint Police Action and the Department of Cooperation and Coordination of Security Activities.

The Institutional Security Cabinet considers terrorism to be a threat to the State and to society, and thus to institutional security. Decrees No. 1895/96, No. 2009/96 and No. 3203/99 establish and regulate the activities of the Chamber of Foreign Affairs and National Defence (CREDEN) of the Council of Government. The CREDEN Executive Secretariat is provided by the Institutional Security Cabinet. The functions of this body include formulating policy, establishing guidelines and adopting programmes and monitoring their implementation, including programmes to combat drug trafficking and other transnational offences such as terrorism.

Among the functions attributed to ABIN, which reports to the Institutional Security Cabinet, under Act No. 9883 of 7 December 1999 is the evaluation of internal and external threats to the constitutional order, including terrorism. This Act also establishes the Brazilian Intelligence System (SISBIN) under the coordination of ABIN. SISBIN will become operational upon the issuing of a decree which is in the final stages of drafting. SISBIN oversees the planning and execution of Brazil's intelligence activities and advises the President on matters of national interest. Its purpose is to strengthen the execution of anti-terrorist activities in Brazil, and its underlying principles are preservation of national sovereignty, defence of the democratic State governed by the rule of law and the dignity of the human person. SISBIN also ensures the enjoyment of and safeguards individual rights and guarantees and other provisions of the Constitution and international treaties, conventions and agreements to which the Federative Republic of Brazil is party.

SISBIN is made up of those organs and bodies of the Federal Public Administration that can, directly or indirectly, produce information of interest concerning intelligence activities, particularly those responsible for external defence, internal security and foreign relations. On the basis of specific agreements and conventions, once the body responsible for monitoring intelligence activities (the Joint Committee for the Monitoring of Intelligence Activities (CCAI) of the National Congress has been consulted), states of the federation may join SISBIN.

The purpose of both SISP and SISBIN is to expand the activities of local bodies aimed at combating crime, including terrorism, by improving coordination between federal and state bodies.

2. **Subparagraph 1 (b)**

Text of the resolution: States shall "criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts".

Question: *How is the criminalization of the funding of terrorism achieved under Brazil's money-laundering legislation, given that the funds involved may not be the result of crimes of the kinds described in article 1 of Act No. 9613/98?*

Reply: With a view to rendering Act No. 9613/98 more effective, the Brazilian Government submitted a bill to the legislature for approval which added a paragraph to article 1 that included the financing of terrorism ("*tout court*") as one in the "range of crimes that may constitute an antecedent to money-laundering". Thus efforts to combat the financing of terrorism are being made, not only through the adoption of measures aimed at curbing the concealment of the illicit origin of funds obtained from criminal activity but also through the adoption of measures to deal with the concealment of funds obtained from licit activities when it is the intention of the perpetrators to use those funds in terrorist activities in the future.

Brazil's lawmakers wish to reiterate their readiness to criminalize this new type of crime: financing terrorism. This intent was also made clear by Brazil's signing of the United Nations Convention for the Suppression of the Financing of Terrorism (the text of which is soon to be transmitted to the National Congress) and by the drafting of a presidential decree providing for the implementation of Security Council resolution 1373 (2001).

Question: *Outline the legal provision that prohibits the collection of funds for terrorist purposes.*

Reply: The provisions of Brazilian domestic law that seek to prevent or suppress the financing of terrorist acts must be viewed in the light of Act No. 9613 of 3 March 1998 (Money-Laundering Act) and other legislation in force, particularly Act No. 7170 of 14 December 1983 (National Security Act). Articles 20 and 24 of the latter Act seek to combat the voluntary and involuntary financing of terrorism through the application of penalties that may reach 30 years' imprisonment.

Article 20 contains an explicit, though not exhaustive, reference to "acts of terrorism": devastating, looting, extorting, robbing, kidnapping, holding in confinement, setting fire, plundering, causing an explosion, carrying out attacks on individuals or acts of terrorism, for reasons of political dissent or to obtain funds to

support clandestine or subversive political organizations. Through force or intimidation, terrorist organizations may, for example, collect funds from third parties to finance their activities.

Article 24 makes it unlawful to "establish, join or support an illegal organization of a military nature, regardless of form or type, armed or unarmed, with or without uniforms, for the purpose of engaging in combat". The term "to support" means "to assume responsibility for expenses, to sustain". Such organizations are of "a military nature" and are formed "for the purpose of engaging in combat"; they have a "cause" to be won through combat, either armed or unarmed. Article 24 is also directed at terrorist organizations that are not armed but engage in terrorist acts via the Internet (cyberterrorism) or by spreading pathogenic agents (bioterrorism) that are "of a military nature, regardless of form or type, armed or unarmed".

Under articles 20 and 24 of Act No. 7710/83, the financing of terrorism does not constitute to be subordinate to an act of terrorism. Even though a terrorist act is not carried out, it is possible to commit the offence of financing terrorism: it is sufficient to devastate, loot, extort, rob, kidnap, hold in confinement, set fire, plunder, cause an explosion, carry out an attack on an individual or an act of terrorism in order to obtain funds to support a clandestine or subversive political organization or to support or finance terrorist organizations.

Question: *Are the provisions of Act No. 9613/98 applicable to individuals and entities not residing in Brazil but holding funds in financial institutions in Brazil and supporting terrorism outside the territory of Brazil?*

Reply: Section IV of Act No. 9613/98 deals with "property, rights or assets derived from crimes perpetrated abroad". Article 8, in its chapeau, stipulates: "In the event that an international treaty or convention exists, and at the request of the competent foreign authority, the judge shall order the seizure or attachment of property, rights or assets derived from the offences described in article 1 that are perpetrated abroad". Paragraph 1 of the same article stipulates: "This article shall apply, independently of any international treaty or convention, when the Government of the requesting country has undertaken to grant reciprocity of treatment to Brazil". Funds belonging to individuals or organizations in respect of which there is evidence of terrorist acts (prior offence) may, on the basis of Act No. 9613/98, be seized and attached (frozen).

3. **Subparagraph 1 (c)**

Text of the resolution: States shall: "Freeze without delay funds and other financial assets or other economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities".

Question: *Given the provisions of articles 4 and 8 of Act No. 9613/48, how are funds and other financial assets belonging to persons and entities associated with terrorism and not derived from crimes frozen?*

Reply: Act No. 7170/83, articles 20 and 24, punishes the financing of terrorism. Funds belonging to terrorists may be frozen through seizure (Code of Criminal

Procedure, section VII, chapter XI) or attachment (Code of Criminal Procedure, section VI, chapter VI). Such funds may also be confiscated. Article 91 of the Penal Code stipulates: "The following are the effects of the sentence: II — forfeiture to the Union, reserving the right of the injured party or of a third party in good faith: (...); (b) the proceeds of the offence or any property or asset constituting proceeds obtained by the agent through the perpetration of a criminal act". Funds "from any property or asset" of a terrorist organization are "proceeds" obtained through the perpetration of a criminal act — terror — jointly with non-sympathizers, through intimidation (involuntary financing), or with sympathizers (voluntary financing).

Question: *Explain how the economic resources of persons and entities providing support for terrorism can be frozen.*

Reply: The seizure and attachment (freezing) of financial assets belonging to individuals and entities that support terrorist entities (i.e. that finance them) may initially be carried out inaudita altera parte, without the individuals or entities whose assets are involved being heard, if the judge believes that this procedure is necessary to ensure that the assets are actually frozen.

Question: *Outline the legal provisions that allow the freezing of funds, financial assets and economic resources that are held by persons or entities in Brazil who support terrorist activities outside Brazil.*

Reply: The Brazilian Government is in the process of introducing the Security Council resolutions into the national legal order by publishing decrees in the country's *Official Gazette*. In the area of anti-terrorism legislation, Decree No. 3267 of 30 November 1999 implemented Security Council resolution 1267 (1999), Decree No. 3755 of 19 February 2001 implemented Security Council resolution 1333 (2000), Decree No. 3976 of 18 October 2001 implemented Security Council resolution 1373 (2001) and Decree No. 4150 of 6 March 2002 implemented Security Council resolution 1390 (2002).

Decree-Law No. 2848 of 7 December 1940 (Penal Code) and Decree-Law No. 3689 of 3 October 1941 (Code of Criminal Procedure), as amended over the years, provide for the seizure and attachment (freezing) of funds and other financial assets or economic resources of persons or entities that finance terrorist activities inside or outside Brazil.

Question: *Explain how the restrictive interpretation given by the Supreme Court to attachment of property ordered by the court of another country will enable compliance with the requirement of this subparagraph.*

Reply: The Federal Supreme Court is a constitutional court. The Constitution prohibits "extraordinary courts or tribunals" (art. 5, para. XXXVII). The freezing of funds and other financial assets or economic resources of persons or entities that support terrorist activities are subject to due process.

4. Subparagraph 1 (d)

Text of the resolution: States shall "Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or

indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;"

Question: *Are there legal provisions that govern the collection and use of funds by bodies such as charitable institutions? How does Brazil ensure that the funds received by such bodies are not diverted from their stated purpose?*

Reply: Brazil places no legal restrictions on the operations of non-governmental organizations, such as charitable institutions. However, such organizations are constituted as not-for-profit civil corporations, legal entities governed by private law, as determined by the Civil Code of Brazil. They may be dissolved by an act of Government, which may withdraw its authorization to operate, when the legal entity commits acts that are contrary to its stated purpose or harmful of the public interest, as set out in article 21 of the old Civil Code (which will remain in force until January 2003 — Act No. 3071 of 1 January 1916 and successive amendments thereto) or in chapters II and III, articles 40 to 69, of the new Code (which will enter into force in January 2003 — Act No. 10406 of 10 January 2002).

Article 26 of the Civil Code of 1916 and article 66 of the Civil Code of 2002 provide that "foundations shall be supervised by the Public Prosecutor's Office of the state in which they are located". The term "supervise" means precisely to ensure that the funds collected by charitable institutions are not diverted from their stated purpose. The supervision of charitable institutions is part of the responsibility of the Public Prosecutor's Office.

It should be mentioned that "international transfers" in national currency through the accounts of persons legally resident abroad of amounts greater than 10,000 reals and all exchange transactions are recorded in the Central Bank Information System (SISBACEN). Based on the data available in the System, the Central Bank monitors transfers to and from countries abroad and, on the basis of previously established criteria, selects certain transactions for closer scrutiny. The criteria include amounts entering the country or sent abroad in the form of donations. Financial institutions, moreover, were alerted to the latter remittances by notice BCB 9068 of 4 December 2001.

In addition to its efforts to combat all types of illegal transactions, the Brazilian Government, as always, has been open to cooperation with other countries both within and outside the region to investigate suspicious activity and uncover illegal transnational transactions of any kind, particularly those associated with the phenomenon of terrorism, which use charitable institutions to further their aims.

Other government agencies that may take action include: the federal police of the Ministry of Justice, the Public Prosecutor's Office, the Brazilian Intelligence Agency of the Institutional Security Department in the Office of the President of the Republic (ABIN), the Financial Activities Control Council of the Ministry of the Treasury (COAF), and the Department to Combat Illegal Exchange and Financial Transactions of the Central Bank (DECIF).

Question: *How does Brazil propose to give effect in its domestic law to the International Convention for the Suppression of the Financing of Terrorism? In particular, how does it propose to incorporate into its penal laws the offences referred to in that Convention?*

Reply: In accordance with article 49, paragraph 1, of the Constitution (which gives the National Congress the authority to pronounce definitively on treaties), the Government of Brazil will shortly submit for the consideration of the legislative branch the International Convention for the Suppression of the Financing of Terrorism, which was adopted by the United Nations General Assembly on 9 December 1999. Should the Congress authorize its ratification, this instrument will allow for the more specific characterization as crimes of financial transactions associated with terrorist acts. In order for it to have effect in domestic law, the Convention will have to be promulgated and published in the country's *Official Gazette*, immediately following the act of ratification. In addition, complementary legislation in this area will also have to be passed in order to give full effect to the provisions of the Convention for the Suppression of the Financing of Terrorism within the national territory.

This complementary legislation will have to be drafted by a commission or inter-ministerial working group. It is possible that one or more draft laws might be prepared to characterize as crimes and prescribe penalties for the acts set out in the Convention, as well as to authorize provisions governing other aspects of the instrument.

Among other commitments undertaken, States Parties are required to establish the financing of terrorism as a separate criminal offence so that it can be punished independently of whether or not the terrorist acts are actually carried out (art. 4), and to take legal measures for the freezing or seizure of funds belonging to terrorists (art. 8). States Parties are also urged to expand their international cooperation mechanisms for the investigation, detention, prosecution and extradition of persons involved in the financing of terrorism.

Question: *Does Brazil have any provisions for regulating alternative money transfer agencies?*

Reply: Act No. 9613/98 provides that legal entities offering national and international money transfer services must register their clients and record transactions involving amounts greater than R$10,000.00 (or approximately US$ 3,700.00 at the rate of exchange of R$2.70 = US$ 1.00) and report them to the regulatory body (Central Bank, CVM, etc.), or, in the absence of a regulatory body, directly to the Financial Activities Control Council (COAF). Council decision 10/2001 extended these reporting requirements to include wire transfers.

It should be pointed out that "money transfers" to or from countries abroad can be executed only by institutions that are authorized by the Central Bank to operate as exchange houses in Brazil and as such are subject to the Bank's supervision. Even the Postal and Telegraph Service of Brazil, which issues international money orders, and entities such as Western Union, while not supervised by the Central Bank, can execute exchange operations only with establishments that are authorized to operate. It should also be mentioned that only banks can send and receive bank drafts. Money transfer arrangements between institutions belonging to the National Financial System, headquartered in Brazil, are subject to regulation and oversight by the Central Bank and required to report evidence of the crime defined in Act No. 9613/98.

5. Subparagraph 2 (a)

Text of the resolution: States shall: "Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists".

Question: *How would article 288 of the Penal Code prevent the recruitment in Brazil to terrorist groups outside Brazil?*

Reply: Article 5 of the Constitution provides that all persons are equal before the law, without any distinction whatsoever, and Brazilians and foreigners resident in Brazil are assured of inviolability of the right to life, liberty, equality, security and property. Paragraph XLIII of the same article states that the law shall consider the practice of torture, unlawful trafficking in narcotics and similar drugs, terrorism and crimes defined as heinous crimes to be crimes not entitled to bail or to mercy or amnesty, and shall hold responsible individuals who order or commit such acts and those who, though in a position to stop them, refrain from doing so. These legal provisions, together with the constitutional principle of the repudiation of terrorism, enshrined in article 4, paragraph VIII, constitute broad supplementary legislation that punishes individuals who provide support, succour or shelter to terrorists in Brazil.

Act No. 8072 of 25 July 1990 governing heinous crimes provides more rigid rules for the serving of sentences. Article 2 of the Act provides that individuals convicted of the crime of terrorism may not receive amnesty, mercy, pardon or bail. It further provides that the entire sentence must be served under incarceration. Article 7 of Decree-Law No. 2848 of 7 December 1940 (Penal Code), as amended by Act No. 7209/84, deals with the application of Brazilian law to crimes committed by Brazilians abroad, which acts as a further deterrent to the recruitment of nationals by terrorist groups.

Article 288 of the Penal Code of 1940 limits itself to criminalizing the association of more than three persons for the purpose of committing a crime. In order to update the concept of "gang, armed group or criminal organization", the Federal Government sent to the National Congress Bill No. 2858 of 27 April 2000, which seeks to include among crimes against public order criminal organization by three or more persons who use violence, intimidation, corruption, fraud or other such means in a structured manner and with a division of tasks to commit a crime. This definition will make it easier for terrorist groups to be brought within the scope of Brazilian legislation.

Other police and intelligence agencies that may take action to investigate complaints or suspicions of recruitment of nationals include: the federal police of the Ministry of Justice and the Brazilian Intelligence Agency of the Institutional Security Department in the Office of the President of the Republic (ABIN).

6. Subparagraph 2 (b)

Text of the resolution: States shall: "Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information".

Question: *Apart from the cooperation it has with other MERCOSUR countries and with the United States of America, what other early warning systems has Brazil implemented to prevent the commission of terrorist acts?*

Reply: In the area of intelligence, the Brazilian Intelligence Agency (ABIN) maintains cooperation and exchanges information with its counterparts in MERCOSUR, the United States of America and other countries. At the domestic level, whenever there is suspicion that a terrorist attack will be carried out, ABIN communicates this information to its regional agencies, which in turn pass on the alert to other security organs within their area of competence. For nearly a decade now, ABIN has been investigating all reports and suspicions of terrorist activities, but so far has found no basis for any of the reports. For its part, the federal police force has cooperation arrangements with similar organs in other countries and with Interpol.

7. **Subparagraph 2 (c)**

Text of the resolution: States shall: "Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;"

Question: *Describe the particular provisions of Brazilian law that cover the procedures relating to cooperation on matters of criminal investigation and judicial proceedings.*

Reply: Book V of the Code of Criminal Procedure, which deals with jurisdictional relations with foreign authorities, contains provisions governing compliance with letters requisitorial in respect of summonses, inquiries, and other measures required for the pre-trial phase of a criminal proceeding. This traditional instrument of communication between international jurisdictions facilitates close cooperation in criminal investigations and criminal proceedings to obtain evidence for the effective provision of jurisdictional protection.

More expeditious mechanisms than letters requisitorial designed to facilitate more direct cooperation, such as the temporary transfer of detained persons to enable them to give evidence in person, are provided in international treaties. The provisions governing international cooperation in criminal investigations and criminal proceedings contained in international agreements signed by Brazil and duly promulgated domestically have the force of ordinary law and take effect from the date of their promulgation. Consequently, the collaboration authorized by treaty may be implemented by the judicial branch without any need for complementary legislation. Article 1, paragraph 1, of the Code of Criminal Procedure guarantees the implementation of treaties, conventions and rules of international law in criminal proceedings in Brazil.

8. **Subparagraph 2 (d)**

Text of the resolution: States shall: "Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens."

Question: *Please explain the provisions of law that prohibit persons and entities legitimately operating in Brazil from providing support to terrorism outside Brazil.*

Reply: In implementation of article 5, paragraph XLIII, of the Constitution, Brazilian law prescribes penalties for individuals who order or commit terrorist acts and those who, though in a position to stop them, refrain from doing so. The possibility that natural and legal persons resident in Brazil may be involved in international crimes such as terrorism, contraband, drug or arms trafficking, money laundering and piracy is a matter of concern for the Government of Brazil. When the issue is raised by representatives of concerned States, the Brazilian authorities always request concrete information that would assist in the launching or expansion of investigations in Brazil. Act No. 9034 of 3 May 1995, in article 2, paragraph V, allows for infiltration by agents of the police or the intelligence services as part of an investigation undertaken by the relevant specialized bodies and authorized by a reasoned judicial order delivered in secret. Investigative resources were strengthened with the passage of Act No. 10446 of 8 May 2002, which contains provisions governing criminal acts with inter-State and international repercussions that must be prevented and punished in Brazil based on uniform standards. It is important to note that, in keeping with the constitutional principles of a democratic State based on the rule of law, the Government does not accept denunciations or follow up rumours, allegations and insinuations unsubstantiated by solid evidence. Where it detects the existence of a system of support for terrorist activities, the Federal Government takes the appropriate domestic legal measures and notifies the target State of the criminal act so that it could alert its security organs.

Other government agencies that may take action in this area include: the federal police force of the Ministry of Justice, the Public Prosecutor's Office, the Brazilian Intelligence Agency of the Institutional Security Department of the Office of the President of the Republic (ABIN), the Financial Activities Control Council of the Ministry of the Treasury (COAF), and the Department to Combat Illegal Exchange and Financial Transactions of the Central Bank (DECIF).

9. **Subparagraph 2 (e)**

Text of the resolution: States shall: "Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts".

Question: *Explain how "terrorism" and "terrorist acts" are interpreted in Brazilian law, given that there is no precise legal description of the crime of terrorism in Brazil.*

Reply: The constitutional imperatives and international commitments undertaken by Brazil are the basis of extensive legislation that supports and provides the tools and legitimacy for the fight against terrorism in the national territory. Although there is still no criminal characterization that includes a specific and detailed definition of the crime of terrorism, the legislation contains a series of provisions that describe criminal conduct inherent in terrorist acts (including criminal association, currency fraud, and trafficking in arms, ammunition and explosives). The fight against terrorism requires action by the executive and judicial branches if it is to succeed and the legislative branch has the power to elaborate laws and adopt international

instruments to channel efforts aimed at the prevention, punishment and eradication of terrorism.

The main legal texts include: Decree-Law No. 2848 of 7 December 1940 (Penal Code); Decree-Law No. 3689 of 3 October 1941 (Code of Criminal Procedure); Act No. 4595 of 31 December 1964 (Financial System Act); Act No. 6815 of 18 August 1980 (Statute on Aliens); Act No. 7170 of 14 December 1983 (National Security Act); Act No. 8072 of 25 July 1990 (Heinous Crimes Act); Act No. 9112 of 10 October 1995 (oversight of the export of services and items for military use, dual use and use in the nuclear, chemical or biological fields); Act No. 9474 of 22 July 1997 (Statute on Refugees); Act No. 9613 of 3 March 1998 (Money Laundering Act); Act No. 9883 of 7 December 1999 (establishing the Brazilian Intelligence System — SISBIN); Supplementary Act No. 105 of 10 January 2001 (increases the flexibility of existing banking secrecy laws).

This legislation is being continuously strengthened. The National Congress is currently reviewing three draft laws of great importance to the fight against terrorism: (i) Bill No. 6764/2002, which proposes, inter alia, in article 301, that terrorism should be established as a crime in the Penal Code of Brazil and penalties ranging from two to 10 years imprisonment provided for those who commit such acts (Decree-Law No. 2848 of 7 December 1940); (ii) Bill No. 1117/2002, which includes the crime of "financing of terrorism" in Act No. 9613 (Money Laundering Act) of 3 March 1998, as a crime associated with "money laundering"; and (iii) Bill No. 2858/2000, which updates the concept of criminal organization in article 288-A of the Penal Code (Decree-Law No. 2848 of 7 December 1940).

Question: *Are all the relevant provisions of the Penal Code of Brazil applicable in the following circumstances: (i) acts committed outside Brazil by a person who is a citizen of, or is habitually resident in, Brazil (whether that person is currently in Brazil or not); and (ii) acts committed outside Brazil by a foreign national who is currently in Brazil*?

Reply: Article 7 of Act No. 7209 of 11 July 1984, amending the general part of Decree-Law No. 2848 (Penal Code) of 7 December 1940, contains provisions on the extraterritoriality of Brazilian criminal legislation. Under those provisions, offences committed by Brazilian or foreign nationals outside Brazil may be punished in the cases covered by the paragraphs and subparagraphs of the Act.

With respect to terrorist acts, reference should be made to section II, covering three cases in which the Act may be applied to the perpetrators of offences committed abroad, subject to the conditions laid down in article 7, paragraph 2. These are cases of conditional extraterritoriality: (i) offences which Brazil has undertaken, by treaty or convention, to punish (such as terrorism); (ii) offences committed by Brazilians; (iii) offences on board Brazilian aircraft or vessels, whether of the merchant marine or under private ownership, when committed in foreign territory and not prosecuted there. Application of the Act is, however, subject to the following conditions: (i) the person concerned has entered Brazilian territory, whether for a short stay or a long stay, whether on business or for pleasure, whether voluntarily or not, whether legally or clandestinely. The person's departure shall not interfere with the conduct of legal proceedings already instituted; (ii) the act must also be a punishable offence in the country where it was committed; (iii) the offence must be one for which Brazilian legislation authorizes extradition; (iv) the person must not have been acquitted abroad or have served a sentence

abroad. Brazilian law may be applied only where the person has not been tried abroad or, if convicted, has not served the sentence; (v) the person must not have been pardoned abroad and must not have been absolved of responsibility for any reason, in accordance with more favourable legislation.

10. Subparagraph 2 (g)

Text of the resolution: It is the obligation of States to "prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents."

Question: *What is the mechanism for cooperation between the federal and provincial authorities responsible for narcotics control, financial tracking, and security, with particular regard to the border controls preventing the movement of terrorists*?

Reply: Under article 144 of the Constitution, public security in Brazil is the responsibility of federal agencies (the Federal Police Department, the Federal Highway Police and the Federal Railway Police), provincial agencies (civil police, military police and military firebrigades) and municipal agencies (with provisions authorizing the establishment of a force of unarmed municipal guards). The Constitution defines the respective areas of responsibility and provides that supplementary legislation shall govern the organization and operation of the agencies involved. The police may be brought in to combat various offences, including terrorist activity, money-laundering and illegal trafficking in drugs. The federal Government is seeking to modernize its administrative structures by improving collaboration with the provincial governments. Among other measures, the Institutional Security Cabinet in the Office of the President of the Republic has instructed the Brazilian Intelligence System (SISBIN) to devise comprehensive and permanent mechanisms to gather intelligence within Brazil (Act No. 9883 of 7 December 1999). The Ministry of Justice is seeking to improve the Public Security Intelligence Subsystem (Decree No. 3695/2000), in the light of the experience of recent years. In sum, the Government is constantly trying to strengthen the police and intelligence areas.

With regard to the movement within Brazil of wanted individuals, the Federal Police Department of the Ministry of Justice is responsible for the constitutional tasks of marine police, and airport, border and immigration controls.

In the Federal Police Department, the General Directorate for Marine Police and Airport and Border Controls has functional and organizational responsibility for the Department of Immigration and Alien Registration (CIMCRE), the Deportation and Expulsion Department (COPREC), the Immigration Department (CPOI), the Passport Control Department (COCEP) and the Police Analysis and Investigation Department (SAIP). The responsibilities are divided as follows:

(i) CIMCRE manages the national system of alien registration, containing basic data on foreign nationals without diplomatic status residing in Brazil for more than 90 days;

(ii) COPREC manages the national register of wanted and banned individuals, containing basic data on Brazilians and foreigners who, by legal

warrant, are wanted by Brazilian or foreign authorities, and on Brazilians or foreigners who are banned from entering or leaving Brazil;

(iii) CPOI manages the national system of international traffic, containing essential data on the entry and departure of foreigners;

(iv) COCEP manages the national passport system; and

(v) SAIP is the central police intelligence agency for immigration.

The names of persons under transit restrictions by decision of the United Nations Security Council and the names of wanted individuals (on the basis of information sent by Interpol and other police and intelligence agencies) are included in the national register of wanted and banned individuals, together with the legal instrument authorizing the restriction of their rights.

SAIP tries to collect information on the movements of wanted individuals and persons forbidden to travel through Brazil. One of the control measures is the verification of the names and other personal data of passengers upon their arrival in and departure from Brazil. When a wanted or banned individual is identified, it is the duty of the Federal Police Department to notify the government agency responsible for enforcement, as well as the operational police unit, so that appropriate measures may be taken. All federal police units and all regular checkpoints for the international movement of persons in border areas have appropriate equipment to consult the operational databases. This system already supplies information to the Public Security Intelligence Subsystem and should feed data into the Brazilian Intelligence System.

Within the framework of MERCOSUR, several agreements on border controls and the movement of persons have been adopted, to supplement the relevant federal legislation. In 1996 a tripartite command for the border region shared by Argentina, Brazil and Paraguay was established to improve coordination of border activities, especially in the light of the terrorist attacks in Argentina in the 1990s.

In other words, even before the attacks of 11 September, border controls were being applied by the Brazilian police and intelligence agencies with greater intensity and meticulousness. Such measures also made it possible to strengthen controls in 2001 and 2002, with the establishment of task forces bringing together various municipal, provincial and federal security agencies. These activities are being stepped up, especially in the border region shared by Argentina, Brazil and Paraguay, but to date there has been no indication of the movement of terrorist suspects or of the existence of terrorist cells or training camps in Brazil.

In the effort to combat illicit drug trafficking, the National Anti-Drug Council (CONAD) has been formulating a Brazilian policy and coordinating its work with that of other federal and provincial agencies. CONAD was established in 1998 and its Chairman reports to the Minister in charge of the Institutional Security Cabinet in the Office of the President of the Republic. In order to streamline those activities, the National Anti-Drug Secretariat (SENAD) was also established. Measures aimed at stamping out drug trafficking are being implemented by the Federal Police Department, in accordance with the Constitution, with the collaboration of other agencies, especially the Federal Tax Department and the Federal Highway Police, and, when necessary, with logistical support and intelligence from the armed forces.

With regard to illicit financial transactions, the decisions of the United Nations Security Council are transmitted by the Central Bank to banking and other related institutions, which are obligated to implement the approved measures, pursuant to article 9 of Act No. 4595 of 31 December 1964. Under that Act, it is the responsibility of the Central Bank to carry out and enforce the provisions mandated by applicable legislation. Article 10, section VIII, of the Act authorizes the Central Bank to monitor financial institutions.

The current regulations are regularly consolidated by the Central Bank for review and circulation among the financial institutions, through circulars that are also available on the Central Bank page on the Internet. This is a flexible system making it possible to report provisions of financial legislation that have been revoked or added, including those that are in response to Security Council decisions.

The Central Bank's department combating illicit exchange and financial transactions (DECIF) has the authority to establish administrative procedures when it identifies activities harmful to the market or detects illicit practices. DECIF must report to the competent public agencies any irregularities or administrative violations coming to its attention, with a view to: (i) investigation of the case (essentially by the Federal Police Department and the public prosecutor's office); or (ii) ongoing monitoring of pertinent information (by, inter alia, the Federal Tax Department, the Financial Activities Control Council of the Ministry of Finance (COAF) and the Brazilian Intelligence Agency (ABIN). By the same token, if there is a substantial indication of illicit practices, COAF may decide to institute action to refer the case to the Federal Police Department and the public prosecutor's office for investigation.

11. **Subparagraph 3 (d)**

Text of the resolution: States are called upon to "become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999."

Question: *Explain how the Government of Brazil is implementing the relevant international conventions and protocols relating to terrorism that it has ratified.*

Reply: International agreements are incorporated in Brazilian domestic legislation with the same status as ordinary law, through their promulgation in the nation's *Official Gazette*. In addition, many international agreements call for new legislative provisions to ensure their application at the national level. Under article 5, section XXIX, of the Constitution, and under article 1 of the Penal Code, acts not previously defined by law as offences may not be treated as such. It is possible that certain offences covered by international agreements are included under other classifications in internal legislative provisions. If that is not the case, it will be necessary to pass a law that not only categorizes the acts as offences, but also establishes the respective penalties. There is no offence without a penalty, and international agreements do not lay down penalties. Brazil is concerned to bring its criminal legislation into line with its international commitments. All the international instruments are strictly subject to the supremacy and normative authority of the Constitution.

Question: *Have the offences under the relevant conventions been included as extraditable offences in bilateral treaties*?

Reply: Many of the extradition treaties concluded by Brazil, especially the oldest ones, do not list extraditable offences, but refer in general to offences for which Brazilian legislation establishes a minimum penalty of at least one year's imprisonment. This is a broad provision under which terrorist acts could be included. The treaties listing offences usually do not lay down specific penalties for terrorism. In the past few years, action has been taken to rectify this situation. Multilateral conventions themselves usually include a clause to the effect that, if the modalities governing the offences are not envisaged in bilateral treaties, the text of the convention may be taken as a basis for extradition.

Article 5 (c) of the 1988 MERCOSUR Agreement on Extradition states that persons committing acts of a terrorist nature shall be subject to extradition. The text gives as examples some of the offences constituting terrorism: (i) an attack on the life, physical safety or freedom of internationally protected persons, including diplomatic agents; (ii) hostage-taking and kidnapping; (iii) an attack on persons or property involving the use of bombs, grenades, rockets, mines, firearms, letters or parcels containing explosives, or other devices capable of causing general danger or public commotion; (iv) the illicit seizure of vessels or aircraft; (v) in general, any act not included above that is committed for the purpose of terrorizing a population or classes or sections of a population, damaging the economy of a country, or its cultural or environmental heritage, or carrying out reprisals on the basis of politics, race or creed. In May 2002, Brazil ratified the MERCOSUR Agreement on Extradition, upon its legislative approval.

Question: *Please provide a progress report on the ratification of the relevant conventions and protocols which Brazil has signed.*

Reply: The Brazilian Government is taking the necessary action to associate Brazil with the 12 international agreements negotiated at the United Nations and the International Atomic Energy Agency, in keeping with the importance Brazil attaches to the primacy of law in combating terrorism. Nine agreements have already been incorporated in domestic legislation, and three are in various stages of analysis, with a view to final approval.

The three agreements whose ratification is still pending are:

(i) The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, which Brazil signed on 10 March 1988. It is currently before the National Congress, with a view to the necessary legislative approval;

(ii) The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, which Brazil signed on 10 March 1988. It is currently before the National Congress, with a view to the necessary legislative approval;

(iii) The International Convention for the Suppression of the Financing of Terrorism, which Brazil signed on 10 November 2001. It is under review by the executive branch, with a view to submission to the National Congress in the near future.

Two OAS Conventions are currently in force in Brazil: the 1971 Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance (which was incorporated in Brazilian legislation by Decree No. 3018 of 6 April 1999); and the 1977 Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (Decree No. 3229 of 29 October 1999).

At its thirty-second session, held in Barbados from 2 to 4 June 2002, the General Assembly of OAS signed the Inter-American Convention against Terrorism. This Convention does not contain an explicit definition of terrorism or terrorist acts. The General Assembly opted for the procedure of including acts by reference to the texts of earlier and future conventions on terrorism. Such texts are listed, with a description of the offences, in an annex to the Convention, and are an integral part thereof.

12. **Subparagraph 3 (f)**

Text of the resolution: States shall: "Take appropriate measures in conformity with relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;"

Question: *Please describe the procedures and mechanisms in place to ensure that asylum-seekers have not been involved in terrorist activity before being granted refugee status.*

Reply: Requests for refugee status are subject to a decision taken by the National Committee for Refugees (CONARE) with prior consultation with the Federal Police, the Ministry of Foreign Relations and the Office of the United Nations High Commissioner for Refugees on the applicant's background. In addition, an analysis is carried out of the objective situation in the applicant's country of origin (which is continually updated) and of the account provided by the applicant during his interview with technical specialists from that body. This practice makes it possible to identify, with a high degree of accuracy, activities that are in violation of the letter and spirit of Act No. 9474 of 22 July 1997 in order to reject applications for refugee status.

If an individual has been wrongly granted refugee status or commits acts that are incompatible with his refugee status, such as terrorist acts and related offences, he will lose his status by virtue of being subject to the provisions of article 3 (exclusion clause) or article 39 (situations involving the loss of refugee status). The Brazilian Government is prepared to investigate, by means of its police and intelligence agencies, specific situations of persons who are suspected of being terrorists or who are associated with terrorism, after receiving relevant information on such matters. Once having lost refugee status, the person involved remains subject to the application of Act No. 6815 of 18 August 1980, which, among its other provisions, regulates procedures for the extradition, deportation and expulsion of foreigners from the national territory.

Act No. 9474 of 22 July 1997 does not provide the possibility of safe haven for terrorists or protect them against prosecution for offences committed. On the

contrary, the system makes it possible to identify persons involved in terrorist activities and ensure the subsequent revocation of refugee status.

13. **Subparagraph 3 (g)**

Text of the resolution: States shall: "Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;"

Reply: *It is not clear from the replies to paragraphs 2 (c) and 3 (g), whether claims of political motivation are recognized as grounds for refusing extradition. Please elaborate on this matter.*

Constitutional requirements form the basis for the procedures of the Brazilian legal system with regard to the question of extradition. The basic constitutional norms are article 5, paragraph LII (no Brazilian shall be extradited, except naturalized citizens, in the case of a common offence committed prior to naturalization or for proven participation in illegal trafficking in narcotics and related drugs), paragraph LIII (there shall be no extradition of foreigners for any political offence or for holding an opinion); and also article 102, paragraph 1 (g), (which establishes the jurisdiction of the Federal Supreme Court). All these precepts, which are contained in article 5 of the Constitution, are immutable clauses, which, therefore, cannot be changed through a constitutional amendment (article 60, paragraph 4, subsection IV, of the Constitution).

Act No. 6815 (Statute on Aliens) of 18 August 1980 is designed, in articles 76 to 94, to regulate extradition procedures. It should be pointed out that article 77, which provides that the Federal Supreme Court may refrain from considering as a political offence attempted assassinations of heads of State or any other authorities, and acts of anarchism, terrorism, sabotage, kidnapping, war propaganda or violent acts to subvert law and order. Criminal conduct constituting terrorist acts is defined in other laws, including Decree-Law No. 2848 of 7 December 1940 (Penal Code), Act No. 7170 (National Security Act) of 14 December 1983, and Act No. 9613 (Money-Laundering Act) of 3 March 1998.

Act No. 9474 (Statute on Refugees) of 22 July 1997 regulates the implementation of the 1951 Statute on Refugees. Two articles should be mentioned: article 3 (exclusion clause) and article 39 (other situations that may result from loss of refugee status). The legislation specifically provides that persons who have participated in terrorist acts are not entitled to refugee status in Brazil. In addition, it provides for the loss of refugee status when it has been proved that information provided for the granting of refugee status is false; that acts which, if they had been known when refugee status was granted, would have resulted in a refusal; or that activities which are contrary to national security or law and order were carried out. An individual who loses such status is subject to the provisions of Act No. 6815 of 18 August 1980 which governs the question of extradition.

Act No. 66851 of 18 August 1980 and Act No. 9474 of 22 July 1997 are complementary and in conformity with the legal precepts of the Constitution. Under the Brazilian legal system, extradition requires the intervention of the executive and judicial branches in order to prevent the granting of refuge to terrorists and make it possible to extradite, deport or expel them from the national territory.

Neither the Constitution nor ordinary legislation lays down the obligation to institute legal proceedings against a Brazilian or foreign national whose extradition is denied by the Federal Supreme Court. At the same time, Brazil has signed bilateral agreements which provide that, if the accused cannot be extradited the State assumes the responsibility to try him. Some multilateral agreements, in particular those relating to combating international terrorism, include a mechanism under which jurisdiction must be exercised wherever the perpetrator of a criminal act is situated, regardless of his nationality. This is the principal of universal justice or jurisdiction for the suppression of particular crimes to which a number of countries are subjected ("no-safe-haven clause"). The requesting State must submit the case to the competent authorities, with material evidence or the trial documents in order to institute legal action under the Brazilian justice system. Lastly, article 7 of Decree-Law No. 2848 of 7 December 1940 (Penal Code), as amended by Act No. 7209/84, relates to the implementation of the Brazilian law concerning offences committed outside the national territory by Brazilians or foreigners under the conditions provided for in its paragraphs and subsections. These legal provisions guarantee that there is no impunity for an offence committed in another country by a Brazilian national or a foreigner residing in or passing through Brazil, although extradition, owing to the constitutional prohibition, cannot be granted.

14. **Paragraph 4**

Text of the resolution: "*Notes* with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard, *emphasizes* the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;"

Question: *Has Brazil addressed any of the concerns expressed in paragraph 4 of the resolution*?

Reply: Brazilian legislation makes it possible to participate in and expand international cooperation in combating money-laundering, illicit drug trafficking, terrorism, organized crime, illegal arms trafficking and unlawful access to weapons of mass destruction. This readiness to cooperate with the international community reflects the importance that Brazil attaches to the primacy of law in the fight against transnational crime.

The Ministry of the Treasury's Financial Activities Control Council (COAF), a financial intelligence unit, has received approximately 16,000 communications on suspicious operations since its establishment in 1998. At the current time, the Council is processing 223 applications for information concerning the transfer of securities and money-laundering including 110 requests made by foreign Governments. This exchange of information, which is speedy and informal, does not require the signing of an international treaty since it is carried out on the basis of the rule of reciprocity in accordance with Act No. 9613/98 (Act on money-laundering). When necessary, memorandums of understanding, based on the Egmont Group model can be signed in order to regulate the exchange of information. Updated information on the memorandums already assigned is contained in the Brazilian

report on the implementation of Security Council resolution 1373 (2001) submitted in December 2001.

In July 2000, the Financial Action Task Force (FATF), established in 1989 under the auspices of the Organisation for Economic Cooperation and Development (OECD), accepted Brazil as a member, following a positive evaluation by a group of experts of Brazilian legislation and action taken in the country to combat that type of crime. The Task Force's 2000-2001 annual report, drawn up in June 2001, places Brazil among the 10 countries that completely carried out the 28 measures in the field of law, finance and international cooperation recommended by the Task Force. This body currently comprises 31 countries.

On the initiative of the South American Ministers of the Economy and with the support of the Task Force, the South American Financial Action Group (GAFISUD) was set up, whose permanent executive secretariat is located in Buenos Aires.

Brazil participates in discussions on ways to strengthen, from the perspective of combating terrorism, multilateral regimes relating to disarmament and chemical, biological, nuclear and missile non-proliferation in the competent forums (the Organization for the Prohibition of Chemical Weapons (OPCW), the Conference on the Biological Weapons Convention, the International Atomic Energy Agency (IAEA), the Nuclear Suppliers Group (NSG) and the Missile Technology Control Regime (MTCR), among others). Brazil understands that the danger of terrorist acts underscores the need not only to strengthen security and non-proliferation activities, but also to carry out the commitments undertaken in order to achieve nuclear disarmament. The existence of nuclear arsenals increases the possibility that individuals or non-governmental actors might illegally gain access to materials that could be used in terrorist attacks. This danger can be overcome only with the complete elimination of those arsenals. The activities of IAEA aimed at combating nuclear terrorism should be planned in a gradual manner in view of the different vulnerabilities and potential threats of each type of material or installation. The Brazilian Government is completely bound by the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and is a full party to the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco), participating actively in its committees and conferences in order to strengthen international and regional cooperation in the field of nuclear non-proliferation and disarmament.

With regard to small arms and light weapons, the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (CIFTA), an instrument which should mark the regional response in efforts to combat terrorism in this field has still been ratified by only a limited number of countries.

Within the framework of MERCOSUR, in 2000 Brazil promoted the establishment of the working group of MERCOSUR and associated States on firearms and munitions, whose first meeting was held in May 2001 in Asunción. The issues dealt with included harmonization of legislation on firearms and munitions, cooperation in regulating trade in firearms and munitions, coordination on the topic in international forums, the development of technologies for reducing the number of accidents in the use of firearms and munitions, and the link between illicit trafficking in firearms and munitions and the illegal drug trade.

Brazil understands that it might be acceptable, at the hemispheric level, to build on the outcome of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, held in New York in July 2001. The Programme of Action adopted recognizes, in its preamble, the link between the topic and the problem of terrorism and sets forth a series of preventive and cooperation measures to be adopted by States with a view to combating unlawful trafficking in small arms and light weapons.

In the area of combating organized crime, the Brazilian Government launched, in 2000, the National Public Security Plan, which includes a series of 15 commitments, which are taking the shape of 124 comprehensive activities. The Plan was conceived on the basis of the principles of interdisciplinarity, organizational and managerial pluralism, legality, decentralization, impartiality, transparency of actions, community participation, professionalism, attention to special regional features, strict respect for human rights and greater regional and international cooperation to combat forms of transnational crime. The Brazilian Government is using the studies and documents drawn up by the United Nations, and, more specifically, the action proposals recommended by the Commission on Crime Prevention and Penal Justice.

Brazil participated in the work that resulted in the elaboration of the United Nations Convention against Transnational Organized Crime (Palermo Convention) and its three Protocols: (i) the Protocol against the Smuggling of Migrants by Land, Sea and Air; (ii) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and (iii) the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition. The text of the Convention has already been submitted for consideration to the National Congress for ratification. In addition, Brazil is not only adopting internal procedures for acceding to the international treaties on combating terrorism but is also concluding penal cooperation agreements with various States. This set of instruments is designed to create a universal body of law and establish the correct legal framework for developing international cooperation in this field. At the subregional level, mention should be made of the efforts carried out in MERCOSUR resulting from the obligations undertaken within the framework of the 1996 Protocol on Mutual Legal Assistance in Criminal Matters, the 1998 Agreement on Extradition, as well as the 1999 Protocol on Mutual Coordination and Cooperation for Regional Security. Within the framework of the latter protocol, the six States parties (Brazil, Argentina, Bolivia, Chile, Paraguay and Uruguay) are joining operational and intelligence efforts to combat various forms of transnational organized crime, including terrorism. In September 2001, the Permanent Working Group was established in order to evaluate and propose joint and coordinated actions against this type of crime.

15. Other matters

Question: *Could Brazil provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give general effect to the laws, regulations and other documents that are seen as contributing to compliance with the resolution*?

Reply: The Brazilian Intelligence System (SISBIN) will have to respond with regard to anti-terrorist actions. The System's operational structure is in the final phase of elaboration. As soon as it is available, the System's organizational chart will be sent to the Counter-Terrorism Committee.